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Current Topics.

Lords Justices and the Privy Council.

THE announcement last week that HIS MAJESTY THE KING had approved that Lord Justice DU PARCQ, the latest recruit to the Court of Appeal, should be sworn of the Privy Council is in accordance with what has become a rule in our legal system. The appointment, if it may be so called, entitles the Lord Justice to be designated "Right Honourable" instead of "Honourable," which was his prefix when he was a puisne. It further qualifies him for sharing in the work of the Judicial Committee of the Privy Council, the supreme tribunal for the hearing of appeals from the Dominions and Colonies. It is true that the ordinary work of the Court of Appeal is normally sufficient, and even sometimes more than sufficient, to require the constant presence of the Lords Justices in their own court; the fact, however, that each of them, as holding "high judicial office" is also a member of the Privy Council, permits of his services being requisitioned, as occasion may require, for taking part in the work at Whitehall, the headquarters of the Judicial Committee. In some respects that tribunal is anomalous; despite this it has worked well in the past, and will doubtless work equally admirably in the future, though it may be with a more circumscribed jurisdiction if the overseas dominions, with their own well-equipped tribunals, elect to make the decisions of these courts final, that is, debarring further appeals to the Judicial Committee.

The Judges and Knighthood.

IN accordance with the traditions of the Bench, it is announced that Mr. Justice STABLE is to receive the honour of knighthood on his appointment as a judge of the King's Bench Division. The rule, which the tradition embodies, dates from the year 1788, when KING GEORGE III laid it down that the Attorney-General, the Solicitor-General, and the judges, if not honourable by birth, should be knighted—to keep up the reputation of the ancient order of knights bachelors. HIS MAJESTY also expressed the wish, which was tantamount to a command, that the ceremony should be cheerfully undergone as an accompaniment of professional promotion. Once or twice a new recruit to the Bench has sought to evade the rule but always without effect. It may be noted, however, that it does not run in Scotland. One or two of the members of the Scottish Bench have, it is true, been knighted, but these have been exceptional. LORD COCKBURN, a sturdy Scot if ever there was one, noted with much amusement in his delightful book "Circuit Journeys," that his friend JOHN ARCHIBALD MURRAY, who had been Lord Advocate and was later appointed to the Bench of the Court of Session, was loud in the praises of a certain sea captain. On being informed that the Admiralty meant to knight him for some gallant action which had been performed by him, he declared with some vehemence, "By the Lord, they shall try me by a court-martial first." Despite this encomium of the sea captain, MURRAY, on terminating his career as Lord Advocate and on going to the Bench, received the accolade and rose up Sir JOHN ARCHIBALD MURRAY, thinking, no doubt, that the case being altered, altered the case.

Rights of Way.

READERS will be familiar with the excellent work performed by the Commons, Open Spaces and Footpaths Preservation Society in securing recognition of ways which at one time or another have been dedicated to the public. A recent correspondent to the *Birmingham Post* complained that, according to information which he had received, although a particular footpath appeared to be a right of way the relatively few people who made use of it rendered it impossible for the Society to take the matter up. In an answering letter, Sir LAWRENCE CHUBB, the Secretary of the Society, urged that that body had never said that it would not do its best to protect public interests merely because a particular path was at the moment used only by a few persons. Experience had shown that a path neglected to-day by the local public might to-morrow become recognised as a most valuable right of way. The fact that a path might be little used might be material from the point of view of collecting sufficient evidence to support the public claim if that were effectively challenged, but it would not prevent the Society asking the local authority to take steps to protect the way. Sir LAWRENCE indicated that when an alleged public right of way was little used, it sometimes happened that the local authority did not feel justified in spending money to establish it, but the fact remained that the burden of protecting public rights of way has been placed by Parliament on the shoulders of the local authority. As readers know, the Rights of Way Act, 1932, sets out the character and length of user sufficient to establish dedication as against the landowner. The Act has been of enormous assistance in clearing up previous ambiguities concerning presumed dedication, and in many cases the Act

has simplified the task of local authorities in carrying out their functions of protecting public rights of way. The initiative, however, remains in their hands and a reluctance to expend ratepayers' money in contesting, for the public as a whole, doubtful cases, is readily understandable.

Duties of Local Authorities.

THE subject was recently referred to by Mr. HUMPHREY BAKER at the first national conference of parish councils, which, as was noted in our last issue in connection with certain statements made by Mrs. RANDALL HOSKING concerning the election of parish councillors, was attended by 274 delegates, representing 151 parish councils in twenty-nine counties. Mr. BAKER, who is deputy secretary of the Commons, Open Spaces and Footpaths Preservation Society, took for his subject the protection of public rights of way. He urged that now that footpaths were no longer exclusively used by villagers, parish councils should make themselves familiar with their duties and powers in the matter. County councils had most of the responsibility, which was sometimes delegated to rural district councils, but parish councils could always maintain their position by bringing to the notice of larger authorities any attempt to obstruct or interfere with the free use of rights of way. It might be added that the smaller local authorities whose members may be presumed to be, in the ordinary course, more familiar with local conditions than are the members of larger local government units, are in a particularly favourable position for the proper and efficient exercise of these functions.

A Medical Secret.

AT a recent inquest on the body of a woman who died from blood poisoning following abortion, Mr. INGLEBY ODDIE made a statement concerning the nature and extent of a doctor's duty to respect confidential information disclosed by a patient. A divisional police surgeon who had been called to the deceased was told by her that she had had an illegal operation and he sent her to hospital. She was dangerously ill and was probably going to die, although an operation might have saved her. The doctor consulted his solicitor as to whether he should report to the police what the patient had said, and his solicitor said it was not his duty to do so. The coroner did not blame the doctor for his action, but observed that if the doctor had taken steps to warn the authorities that the woman had had a felony committed on her and was dangerously ill, a dying statement might have been taken from her in the presence of a magistrate. Unless that procedure was followed, the woman's statement to the doctor could not be used in a court of law. Mr. ODDIE referred to the view expressed by the late AVORY, J., concerning the duty of a doctor in such circumstances. This was to the effect that where a patient was dangerously ill and likely to die, and made a statement to her medical attendant concerning her death and involving proceedings against some other persons, that statement should be divulged to the authorities in the interest of the administration of justice. The coroner said that while admitting there was a moral obligation on the part of the doctor to preserve confidential relations between him and his patients, there were certain circumstances where that confidence should be overridden. The position was by no means satisfactory and was one that ought to be considered by the authorities. Until something was done in that way he feared that the secrecy which always surrounded those cases would be maintained and many criminal abortionists would go scot-free, as he had no doubt they often did now.

Blood Tests.

SOME time ago we adverted to the services capable of being rendered to the court by tests indicative of the blood group to which a defendant in affiliation proceedings and the like belonged. A recent case provides further illustration of the utility of taking the appropriate blood test. The defendant was charged with driving a car under the influence of drink. A sample of his blood was taken and analysed, and a doctor stated that he could think of no way in which a proportion of carbon monoxide had got into the sample except from the fumes of the car's exhaust, and that he believed that the defendant was suffering from carbon monoxide and not alcohol poisoning. It was proved that part of the exhaust system of the car was broken, though conflicting opinions were expressed as to the effect of the fracture upon the driver when the vehicle was in the open air. The Bench considered that no jury would convict in view of the fact that the proved presence of a proportion of carbon monoxide in the defendant's blood introduced an element of doubt as to whether the defendant was under the influence of alcohol sufficiently to cause him to be incapable of driving a car. He was accordingly acquitted.

Court Accommodation for the Press

BRIEF mention may be made of a matter of some interest which was alluded to in last Saturday's *Times*. It is stated that members of the press entering the South Western Police Court on the previous day were handed a letter, signed by the learned magistrates, Mr. CLAUD MULLINS and Mr. CLYDE WILSON, in which it was stated that it had been decided to bring that court into line with other London courts with reference to certain facilities accorded to the press. In future, press representatives would not be allowed to enter the council room until the work of open court began, and they would not be allowed to occupy seats in the court room reserved for solicitors. It appears that in the particular court concerned, accommodation for press representatives is made for two persons, while four attend the court regularly, and on the day when the decision of the court was made known two reporters sat at the rear of the court on the form used by defendants answering summons.

Rules and Orders: Local Government (Financial).

ATTENTION should be drawn to Provisional Regulations, dated 13th October, 1938, which have been made by the Minister of Health under s. 6 (3) of the Local Government (Financial Provisions) Act, 1937. The regulations are entitled the "Local Government (Losing Areas in County Districts) (Third Fixed Grant Period) Regulations, 1938," and came into immediate operation as provisional regulations. An explanatory circular, No. 1743, states that the regulations have been made after consultation with the County Councils Association, the Association of Municipal Corporations, the Urban District Councils Association, and the Rural District Councils Association. They relate to (*a*) the substitution in certain cases, under s. 6 (i) of the Local Government (Financial Provisions) Act, 1937, of an annual rate of reduction of one-thirtieth for the annual rate of reduction of one-fifteenth provided for in s. 94 (i) (*b*) of the Local Government Act, 1929, and (*b*) the making good in certain cases, under s. 6 (2) of the Act of 1937, of the loss suffered by the annual reductions of the remaining one-thirtieth. The regulations prescribe, in Pts. I and II of the schedule, the conditions concerning the existence of which local authorities must satisfy the Minister in applications respectively under sub-ss. (1) and (2) of s. 6 of the Act of 1937. In regard to applications under sub-s. (1), the regulations are limited in their application to the third fixed grant period (the five years which began on 1st April, 1937), while as to applications under sub-s. (2), the regulations have effect in relation only to years of that grant period remaining at the date on which a direction under that sub-section is given (the three years beginning on 1st April, 1939). Forms have been prepared for the use of any county district council which considers that within its district there is comprised an area to which either Pt. I or Pt. II of the schedule of conditions in the regulations applies, and the circular states that

applications on these forms should be submitted not later than 30th November, 1938. The regulations themselves are published by H.M. Stationery Office, price 1d. net.

Local Government Superannuation Act, 1937: Minister's Decisions.

THE following appeals under the Local Government Superannuation Act, 1937, which have recently been decided by the Minister of Health, are of some general interest in view of the recent character of the legislation concerned and the wide variety which they display in the matters involved. In one case a local authority issued a notification under Art. 5 of the Local Government Superannuation (Administration) Regulations, 1938, which indicated that an employee would be entitled to reckon as non-contributing service a period of service in which he contributed under the Poor Law Officers Superannuation Act, 1896, but in relation to which he did not become a transferred poor law employee or a transferred rating employee. The appellant contended that as he was not entitled to a refund of the contributions paid under the Act of 1896 he should be entitled to reckon the previous service as contributing service. This was negatived by the Minister who pointed out that the appellant who had voluntarily resigned his post in 1916 and had since been employed by a water board, did not fall within any of the classes defined in s. 40 (1) of the Local Government Act, 1937, as entitled to reckon previous service under the Act of 1896 as contributing service. In another case an employee contended that the period during which he served as apprentice to an officer of a local authority was service within the meaning of the Act. Under the provisions of the Indenture of Apprenticeship certain payments were required to be made to the city surveyor and the corporation, and periodical payments were required to be made to the appellant as the apprentice by the corporation. The Minister decided that such payments were not made to the appellant as an employee but in pursuance of a collateral agreement constituted by the indenture, and in consideration of the benefits which the corporation expected to reap from the existence of the relationship of master and apprentice between its surveyor and the appellant whom the surveyor had taken into his service. The service under the indenture was not service within the meaning of the Act. In a third case, the Minister decided that having regard to the definitions of "local authority" and "service" in s. 40 (1) of the Act, the provisions as to the reckoning of previous service could not be construed as applying to service with a local authority in Northern Ireland. In a fourth case, a borough council intimated that a supplementary teacher employed in a school provided and maintained by the council would, if she remained in its employment in the same capacity until 1st April, 1939, become a contributory employee and entitled to reckon as previous service her service with the council in various schools. The teacher appealed on the ground that she should also be entitled to reckon her previous service in a non-provided school. This was negatived by the Minister, having regard to the definition of "service" in s. 40 (1) of the Act.

Recent Decisions.

IN *Re Cartwright, deceased: Cartwright* v. *Smith* (*The Times*, 3rd November) the Court of Appeal (Sir WILFRID GREENE, M.R., and SCOTT and CLAUSON, L.JJ.) reversed a decision of BENNETT, J. (81 SOL. J. 584) and held that s. 75 (5) of the Settled Land Act, 1925, had the effect of converting into real estate securities in which capital moneys representing the proceeds of sale of freehold property comprised in a settlement had been invested, and accordingly that such securities were incapable of being disposed of by a will admitted to probate under s. 1 of the Wills Act, 1861. See *Re Lyne's Settlement Trusts* [1919] 1 Ch. 81.

In *Haile Selassie* v. *Cable and Wireless, Ltd.* (*The Times*, 4th November), the Court of Appeal (Sir WILFRID GREENE, M.R., and SCOTT and CLAUSON, L.JJ.), ordered the defendants' appeal against the judgment of BENNETT, J. (82 SOL. J. 645), to stand over for four weeks in view of a statement by the Prime Minister that it was intended to accord legal recognition to Italian sovereignty in Ethiopia. Such recognition is normally retrospective. The learned judge held that the *de facto* recognition of Italian sovereignty in Ethiopia did not prevent the plaintiff recovering a sum admittedly due on a contract relating to the transmission of wireless messages between a radio-telegraphic station in Ethiopia and Great Britain and made on behalf of the plaintiff as Emperor of Ethiopia with the defendants. The Master of the Rolls intimated that the court did not exist to hear appeals which would be academic.

In *Pratt* v. *Cook, Son and Co.* (*St. Paul's*), *Ltd.*, the Court of Appeal (SLESSER, SCOTT and GODDARD, L.JJ.) allowed by a majority an appeal from a judgment of WROTTESLEY, J. (82 SOL. J. 234), who held that a packer formerly employed by the appellants was entitled to recover from them in respect of certain deductions from his weekly wages, which he alleged had been made in breach of the Truck Acts, 1831 and 1896. Reasons for the decision are to be given later.

In *Tate, M. J.* v. *Tate, R. W.* (*The Times*, 5th November), BUCKNILL, J., granted a wife a decree *nisi* of divorce on the ground that, notwithstanding a separation deed entered into in June, 1931, her husband had deserted her without cause for at least three years preceding the presentation of the petition (Matrimonial Causes Act, 1937, s. 2). His lordship intimated that the husband had repudiated the deed by failing to make the payments thereunder, by disappearing and failing to keep in touch with his wife.

In *Attorney-General for Alberta* v. *Attorney-General for Canada and Others* (*The Times*, 5th November), a judgment was delivered on 4th November indicating the reasons why the Judicial Committee of the Privy Council dismissed an appeal brought by the Attorney-General for Alberta from a judgment of the Supreme Court of Canada declaring *ultra vires* a bill entitled "An Act respecting Taxation of Banks," which was passed by the Legislative Assembly of the Province of Alberta in 1937 (see 82 SOL. J. 595).

In *Gillmore* v. *London County Council* (*The Times*, 8th November), DU PARCQ, L.J., sitting as an additional judge of the King's Bench Division, held that the plaintiff was entitled to damages for personal injuries sustained by slipping while doing physical exercises during a course of instruction by the defendant council for which he had paid a small fee. The defendants had hired a hall with a highly-polished floor, which the learned Lord Justice found to be dangerous for the purpose. There had, therefore, been a breach of warranty, and £220 damages were awarded.

In *B. G. Utting and Co., Ltd.* v. *Hughes* (*Inspector of Taxes*) (*The Times*, 9th November), MACNAGHTEN, J., upheld a decision of the Special Commissioners of Income Tax to the effect that, where houses had been disposed of by a company carrying on the business of builders, contractors and developers of building estates by way of ninety-nine years' leases at ground rents, completed sales in the course of the company's trade had been effected the proceeds of which must be brought into the company's trading accounts, and that the correct method of dealing with the transactions was to bring in as receipts from sales, assessable under Case I of Sched. D of the Income Tax Act, 1918, not only the amount of the premiums but also the realisable value of the ground rents at the date of the transactions. *Inland Revenue Commissioners* v. *Emery* (*John*) *and Sons* [1936] S.C. (H.L.) 36, applied.

In *Marthews, E. W.* v. *Marthews, L. R.* (*The Times*, 9th November), LANGTON, J., dismissed a husband's petition for a decree *nisi* of divorce on the ground of his wife's desertion for the statutory period in view of the fact that the husband had during that period "as the result," in his lordship's words, "of bad legal advice" presented a petition for judicial separation. *Stephenson* v. *Stephenson* [1911] P. 191, applied.

Criminal Law and Practice.

"POSSESSION" IN RECEIVING CASES.

It is sometimes not a little difficult to direct a jury on the question whether there has been actual physical possession of the stolen goods by the defendant on a charge of receiving. At the Middlesex Sessions on 27th October, in *R.* v. *Spencer and Norris*, a question was argued as to whether the goods alleged to have been stolen were in the possession of the accused. Both defendants had spent occasional nights in a stable where some of the goods were found. Eventually the jury found the prisoners not guilty on charges of stealing and receiving the goods, acting on the direction of the deputy-chairman.

Though the question is ultimately one of fact, there is no lack of guidance in the authorities. In the ninth edition of "Taylor on Evidence," vol. 1, p. 120, it is stated: "The finding of stolen property, in the house of the accused, provided there were other inmates capable of committing the larceny, will, moreover, be of itself insufficient to prove his possession, however recently the theft may have been effected, though, if coupled with proof of other suspicious circumstances, it may fully warrant the conviction of the accused."

In *Ex parte Ransley* (1823), 3 D. & R. 572, it was held that the mere finding of smuggled spirits in the defendant's house during his absence would not be regarded as conclusive evidence of knowledge to support a conviction under 11 Geo. 1, c. 30.

In *R.* v. *Savage*, 70 J.P. 36, the stolen goods were traced to a house which the prisoner occupied with others, some of the goods being found behind the prisoner's bed. The prisoner was not at home when the goods were placed there, and when told by the police that they believed that he had stolen property in the house he answered that he knew nothing about it. The recorder left the question to the jury and asked them whether the goods were on the prisoner's premises with his knowledge and sanction. The prisoner was found not guilty.

From time to time cases arise in which it is not only proper but necessary not to submit the case to the jury. In *Rex* v. *Batty*, 76 J.P. 388, the stolen goods were found on premises of which the prisoner's wife was tenant at the time they were found, but which the prisoner had vacated one week previously. The recorder left the case to the jury and the prisoner was convicted. An appeal was allowed on the ground that there was no evidence to go to the jury.

On somewhat different facts the same conclusion was reached in *Rex* v. *Foreman*, 9 Cr. App. Rep. 216, in which a stolen packing case containing aluminium goods was actually found in a flat occupied by the appellant, but in a room which he had let to another man, and which, according to the appellant, was kept locked by his tenant. The Lord Chief Justice said: "We do not say that if stolen goods are found in a house it is not evidence in some cases that they are in the possession of the occupier, but we think, in this case, having regard to all the circumstances, there is not sufficient evidence to convict."

The matter was considered in great detail in *R.* v. *Lewis*, 4 Cr. App. Rep. 96. The accused in that case had frequently visited one person who had pleaded guilty to theft and another who was found guilty of receiving the property in question.

There was evidence that the appellant was living with one of the persons convicted of the burglary in question. Part of the stolen property was found in her house on the day of her arrest. Some of it was found in the room used by the man with whom she was living, and some of it was found in the scullery. In his summing up the recorder said: "Do not you think she must have known all about it?" The prisoner was found guilty. Jelf, J., in delivering the judgment of the Court of Criminal Appeal, said: "Even if she did know all about it, this is not possession by her if Gardiner was the thief and did not part with the possession. Even assuming that appellant knows that those with whom she is consorting are thieves, the mere fact of finding property admittedly stolen on premises occupied by her is not sufficient to raise a presumption that she is in possession of that property. We do not think she has even been proved an accessory after the fact, as there was no concealment by her to prevent the goods being discovered."

The matter is ably summed up in "Russell on Crimes," vol. 2, p. 1054: "The finding of stolen goods in a house may be, in some cases, sufficient evidence that they are in the possession of the occupier, but this by no means always holds good, and regard must be had to the circumstances and the degree of control over the goods, the association with the thieves and the circumstances of the case generally." Circumstances vary considerably, and the first question always must be in many of these cases, not as to how the jury should be directed, but whether there is sufficient evidence to go to the jury.

LARCENY BY FINDING.

An interesting point on larceny by finding arose at Colchester Quarter Sessions on 21st October, 1938. The accused had taken a bag by mistake for his own from an omnibus, and it was alleged that, although at the time he had no intention of appropriating it feloniously, he subsequently did so.

The leading authority on the point is *R.* v. *Thurborn*, 18 L.J.M.C. 140, in which the prisoner picked up a bank-note in the street, intending at the time to appropriate it. Before he disposed of it to his own use he was actually informed as to who was the owner. The opinion of the judges was taken and they held that, as the original taking was not felonious, there could be no larceny.

A very similar case to that at Colchester was *R.* v. *Mortimer* (1908), 99 L.T. 204, in which a person deposited a Gladstone bag in the cloakroom at Victoria Station. Later in the day he called for the bag, but it could not be found. It was found at the prisoner's hotel, and the prisoner said that he himself had deposited luggage in the same cloakroom at Victoria Station on the morning when the Gladstone bag was deposited. The Gladstone bag was returned to him by mistake owing to a similarity between the numbers on the cloak-room tickets. He failed to inform the authorities the next day. On that evidence he was found guilty.

On appeal Lord Alverstone, C.J., adopted in his judgment the statement in "Archbold's Criminal Pleading," 23rd ed., at p. 445: "If a man finds goods that have been actually lost or are reasonably supposed by him to have been lost, and appropriates them, really believing, when he takes them, that the owner cannot be found, it is not larceny; but if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny." "I desire to say," added Lord Alverstone, "that if it is suggested that *R.* v. *Thurborn*, *supra*, goes the length of saying that in every indictment for larceny it is imperative for the judge to tell the jury that the prisoner must have the *animus furandi* at the time of taking, then, in our opinion, it goes a great deal too far. We think that the real point of the cases cited turns upon there being an intention to restore the property having regard to the means of knowledge which the prisoner had at the time." The appeal was dismissed. It is interesting to observe that the passage quoted by Lord Alverstone, C.J., from "Archbold" is taken almost verbatim from Baron Parke's statement of the opinion of the court in *R.* v. *Thurborn*, *supra*.

The law undoubtedly is that an original lack of felonious intent at the time of finding is sufficient if proved to acquit the prisoner even if he is guilty of a subsequent felonious taking. It will only be necessary to direct the jury that they must find felonious intent at the time of finding if that is

directly put in issue by the defence (*R.* v. *Thurborn*, *supra*). Whether a prisoner who proves innocent at the time of finding can be guilty of larceny as a bailee on a subsequent appropriation must be left for consideration in a future article.

The St. Hilary Faculty Appeal.

THE long drawn-out dispute between the vicar, or vicars, and certain parishioners of a remote Cornish parish, as to the legality of various ornaments and features of the church has, it is hoped, been brought substantially to an end by a judgment of the Court of Arches (82 SOL. J. 892) delivered by Mr. W. N. Stable, K.C. (as he then was) sitting as deputy for Sir Philip Baker Wilbraham, who, as Chancellor of the Diocese of Truro, had heard previous litigation in the same matters and therefore could not hear the appeal. After an argument lasting three days the learned Deputy Dean delivered a very long judgment, on the whole affirming the decision of the present Chancellor, Sir William Graham-Harrison, who had granted the petitioner a faculty for the removal of certain ornaments and structures in the Church of St. Hilary (82 SOL. J. 607). A great deal of the judgment is taken up with the history of this unfortunate case, and the virtual defiance of the Consistory Court by the former vicar, who has now retired, but on one point the judge decided an important principle of church law, which will be binding on all Consistory Courts, and will go some way to solve a problem which has been troubling chancellors and ecclesiastical lawyers for some time past.

The problem concerns the legality, or otherwise, of a stone altar in a church. The late vicar of St. Hilary, the Rev. Bernard Walke, removed the holy table he found in the church and placed a stone altar in its place, and at later dates down to 1934, set up five other stone altars, in every case without applying for a faculty. In *Faulkner* v. *Litchfield* (1845), 1 Rob. Ecc. Cas. 164, the then Dean of the Arches, Sir Herbert Jenner Fust, refused a confirmatory faculty for a stone altar in the Round Church at Cambridge, and did so as a matter of law and not of discretion. He made no order authorising removal, because it was not asked for, but it was clear that if it had been he would have done so. This decision was afterwards approved by the Privy Council in *Liddell* v. *Beal* (Moore, Special Report), and is still regarded as an authority.

On the other hand, it is an undoubted fact that there are a great many stone altars—a schedule put in contained a list of over eighty—in English churches and cathedrals, and in recent years Chancellors have granted faculties for stone altars, sometimes ancient ones restored, and in all such cases without opposition. Westminster Abbey, St. Paul's Cathedral and York Minister, in all of which there are stone altars, are not in point, as they are exempt from the faculty jurisdiction.

The question was how could these faculty decisions be reconciled with *Faulkner* v. *Litchfield*. It would at first sight seem impossible, but the Deputy Dean has succeeded in doing so by making a distinction which was not argued for on either side. The six altars were not all in the same category, and the high altar which had been placed at the east end in substitution for the original holy table must be distinguished from the rest. The Chancellor, he held, was right in allowing this altar to be removed, because the rubric required that a moveable holy table should be placed in the church and this had not been done. Once, however, that had been done, the situation of the remaining five altars was wholly changed. At the time of the decision in *Faulkner* v. *Litchfield* and for long after, it was generally contemplated that there should be one and only one holy table in a parish church, as distinguished from a cathedral, and that was the table the subject of that case. Since then the practice of having a second altar in a side chapel of a church, especially in large churches, for the purpose of daily services to small congregations, has become almost general, and a great many faculties have been granted for that purpose (see *Re St. James, Buxton* [1907] P. 368). There was no authority requiring those side altars to be moveable or of any particular material, and the Deputy Dean held that the Chancellor had a discretion to allow those altars, or some of them, to remain. That view was confirmed by *Rector of Hayes* v. *Fulford* [1910] P. 18. It should be added that the real ground of illegality of the high altar was not that it was of stone, but that it was fixed and immoveable, being built into the fabric of the church. A wooden altar is normally moveable, but a stone altar is not. The remainder of the Deputy Dean's judgment does not decide any legal question of general interest. He ordered certain ornaments and other articles to be removed, not altogether because they were *per se* illegal, but because they had been ordered to be removed on a previous petition, and had either not been removed or had been brought back into the church again, in contempt of the Consistory Court. He allowed, however, a confessional box to remain, although not a usual article of church furniture to-day, or one covered by the Ornaments Rubric referring to the second year of King Edward VI. On the other hand, he ordered the removal from the church of a thurible or censer, an ornament or article used in a great many churches to-day.

Diocesan authorities are quite justified in insisting on the issue of faculties for additions and alterations, especially having in mind the grievous and in some cases irreparable damage that was inflicted on so many ancient churches during the nineteenth century under the name of "restoration." This was at least partly due to the failure to observe the law that requires a faculty for any alteration to a church, its furniture, fittings and ornaments.

Costs.

WITNESSES' ALLOWANCES.

THERE are a few points with regard to the allowances to be made to witnesses upon which there still seems to be considerable doubt, and it will be useful if we examine briefly the principles involved.

It will be recalled that there is no fixed scale of allowances to be made to witnesses in respect of their attendance to give evidence in an action. Such a list was appended to the "Directions to the Masters" which was compiled in 1853, but it is manifest to all that this list must now be seriously out of date, and the changes that have occurred in the social status of different classes of persons makes it a very unreliable guide.

Moreover, there are two important directions contained in the Rules of the Supreme Court, 1883, which, in a sense, render such a list as the one mentioned above redundant. We refer in the first place to Ord. 65, r. 27 (9), which states that there shall be allowed on the taxation of a bill as between party and party "such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses." Further, by Ord. 65, r. 27 (29), a taxing master is to allow all such costs, charges and expenses, as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party.

These two provisions leave the taxing master with a very wide discretion as to the allowances he may think fit to make in respect of the attendance of witnesses at the trial of an action. In this respect it will be borne in mind that the parties to the cause are to be paid the reasonable expenses in the same way as other witnesses, see *Davey* v. *Durrant* (1858), 24 Beav. 493. The reasonable expenses would be travelling expenses and the cost of sustenance and accommodation consistent with the person's station in life, together with a sum to cover his loss of time.

So far as the allowance for the loss of time is concerned, no hard and fast rule can be laid down, but one may say that it is a rare occurrence to recover in a party and party taxation anything in excess of four or five guineas a day in respect of professional or business men of standing, although there is a more or less recent instance where ten guineas a day was allowed in respect of a foreign lawyer who was called to give evidence. It was shown, however, in that instance, that the person's evidence was vital to the case and further that he was in the unique position of being perhaps the only man who could have been called, and, further, that his time was worth something considerably in excess of ten guineas a day and that in fact he lost considerably more than that sum by reason of his attendance at the trial.

The allowance for loss of time will be calculated by reference to the time *reasonably* involved in travelling to the place of trial, remaining there during the trial, and returning home; and the time occupied, adjudged as reasonable by the taxing master, may not always correspond with the time actually occupied by the witness. We have in mind the case of a witness who comes from abroad by a route which, on investigation, proves not to have been the shortest or most speedy route although it might have been the most convenient to the witness. A careful examination of the various routes which might be taken and a comparison of the times involved will often prove of considerable assistance in attacking a charge in a party and party bill of costs in respect of a witness's attendance. There is a case where a witness's travelling time from Canada was reduced by half by the simple expedient of checking the alternative routes from New York and Montreal, and by showing, as a result of this comparison, that the witness had selected the most comfortable, but not the quickest route to this country.

The allowance in respect of travelling expenses again will depend wholly on the status of the witness, and whereas in one case it would be reasonable to pay the witness to travel on, say, the "Queen Mary," yet in the case of another witness that mode of travel might very well be regarded as unreasonably luxurious.

It is quite useless merely to prove that a certain sum was paid to the witness and to argue that it should be allowed on a party and party taxation simply on the ground that that sum is what the witness demanded, and what the party calling him had to agree to pay before the witness would consent to come to the trial. In the case of an English witness there is one very good answer to rebut this argument, and it is a point upon which we shall have more to say later. In the case of a foreign witness, there is, of course, the answer that all that the losing party is to be asked to pay is the *reasonable* cost of bringing the witness here, and if the witness is so unreasonable as to demand an exorbitant sum, and the successful party agrees thereto, then it is for him to meet that part of the expense which is in excess of a reasonable allowance. It will be borne in mind that the last part of sub-s. (29) of r. 27 (*supra*), states quite plainly, in effect, that nothing shall be allowed on a party and party taxation which might be regarded as in the nature of a luxury.

Space does not permit of our touching upon two other important points with regard to allowances to witnesses, and we shall have to leave these over until our next article on the subject.

Company Law and Practice.

Examinations in a Winding Up.

EXTENSIVE powers are given to the court by s. 214 of the Companies Act, 1929, for the summoning of persons who may be in a position to give information or produce documents which will help to put a liquidator into possession of all matters relevant to the winding up of a company. There are a number of decisions on different points covered by the section and these decisions are by no means always easy to follow. A new decision is therefore to be welcomed, and the recent case of *Re Maville Hose, Ltd.*, 159 L.T. 410, provides the occasion for referring once again to this topic. The wording of the section is important, and I will first set out a part of it *verbatim* :—

> "(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company."

The discretion given to the court by this sub-section is an extremely wide one, and once the court has in its discretion deemed a person to be capable of giving the information referred to in the sub-section, that person will not be able to induce a superior court to set aside the order for his attendance unless he can show that a grave miscarriage of justice would be thereby produced. Indeed, there is some ground for saying that a person summoned for examination has no right of appeal but must attend as ordered. Sub-section (2) of the section—which I need not reproduce in full—gives the court power to examine the person summoned on oath, either by word of mouth or on written interrogatories. The answers may be reduced to writing and the court may require the writing to be signed. The proceedings are held in private—the section is not concerned with public examinations, which are provided for by s. 216 and can only be ordered in very special circumstances. Private examinations under the section which we are now considering may be ordered in any kind of liquidation, whereas a public examination can only be ordered if there has been a compulsory winding-up order made in England and the official receiver has reported that, in his opinion, a fraud has been committed.

Sub-section (3) of s. 214 I want to set out in full. It reads as follows :—

> "(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien."

Then sub-s. (4) deals with the case of a person who refuses to appear at the prescribed time. If he has first been tendered a reasonable sum for his expenses and has no "lawful impediment," the court may order him to be apprehended and so brought before it for examination.

Now the case of *Re Maville Hose, Ltd., supra*, was more particularly concerned with sub-s. (3). The company was in voluntary liquidation and had a provisional liquidator. It appeared that another company had made two separate advances to the company on the security of two debentures and had also guaranteed payment of moneys which might become due from the company now in liquidation. The liquidator applied for and obtained under s. 214 an order requiring a director of the second company—the one not in liquidation—to attend for examination and also to bring with him and produce certain documents set out in a schedule to the order "and all other books, papers, deeds, writings and other documents in his custody or power in anywise relating" to the company in liquidation. This order was made by the registrar and the director moved to have it discharged on the ground that it was made without jurisdiction and was oppressive. To this the liquidator took the objection that the director had adopted a wrong method of proceeding. It was said that the proper course was to attend for examination as ordered and then to refuse to produce before the registrar such documents as he might not be willing to produce. The

argument was based on the analogy of the case where a proposed examinee objects—not to producing documents—but to answering questions. In such a case the correct procedure is for him to attend and to refuse to answer such questions put to him as he thinks ought not to be asked. The position when an order has been made for production of specified documents is, however, not the same. "It is not right," says Simonds, J., in the above-mentioned case, "that he shall be compelled to attend before the court and refuse to produce the documents which he has been ordered to produce. He ought not to be put in the peril of the court's finding that he had refused to obey an order of the court which the court finds was a proper order." In the one case there is an order to attend and be examined. That is an order which he must obey. Having obeyed it, it is still open to him to object to any specific question and in doing so he will not be disobeying any order of the court. In the other case there is an order to attend with certain documents. If he attends without the documents he has disobeyed that order. If, therefore, he objects to producing the named documents he must get the order discharged so far as it relates to the documents which he objects to producing. Otherwise he puts himself in danger of having proceedings for contempt brought against him before it has been established whether or not that part of the order to which he objects was proper. His first step must be to test the propriety of the order by moving to discharge it and so having that question determined before attending before the registrar for his examination. On this point, therefore, the director was held to have proceeded in the right way and the liquidator's objection to the procedure was bad. The case is important as showing the difference between the simple case which arises when the court makes an order for attendance under sub-s. (1) of s. 214 and the case where the court makes a further order for production of documents under sub-s. (3).

The director had also objected to being ordered to produce the documents on the grounds that the order was oppressive. In dealing with this argument—which he upheld—the learned judge had some interesting observations to make on the proper stage in the proceedings for such an order to be made. It is true that in this part of his judgment he is relying to a certain extent on the particular circumstances of the case. These circumstances, as they appear from the report, do not however appear to have been very unusual. I have already given the salient facts, and they form a story with no startlingly peculiar feature. The learned judge held that the learned registrar had not properly exercised his discretion "at any rate at this stage of the proceedings." The order made was, so far as it related to the production of documents, premature. After the director had attended before the registrar to answer questions, it might be right and proper on consideration of his evidence to direct certain documents to be produced, but that was a question which could not, in the opinion of the learned judge, be decided before the director had actually appeared and been examined. "There are a number of questions to be determined before it is right to decide that a company against whom a hostile claim may be launched should be ordered to produce to the court for the purpose of their examination by the court, a number of documents, a great many of which might, on discovery between the parties, be privileged . . . It is very important in exercising a jurisdiction under section 214, which is in any case an inquisitorial and oppressive jurisdiction, to be careful not to allow the section to be oppressive as between the company and a third party against whom it is proposed, and indeed contemplated, that hostile action may be taken."

There was a further small point which was argued in the same case, though the learned judge refrained from finally determining it. In this case the person summoned under s. 214 was a director of another company, and he was really summoned and required to be examined in his capacity of a director of that other company. The object of the examination was to investigate the position as between that company and the company in liquidation. The director summoned was not personally involved to the extent that proceedings might be started against him, though he was of course by virtue of his office a person who could supply information concerning the trade, dealings, affairs or property of the company. In an ordinary case the person summoned has himself been directly concerned with such trade, dealings, affairs or property, and so far as sub-s. (3) is concerned himself has, or is alleged to have, books and papers in his custody or power. In *Re Maville Hose, Ltd., supra*, the books and papers which the director was required to produce were documents with which the company of which he was a director was concerned. They were no personal concern of his own. In these circumstances it was suggested that the books and papers were not in his custody or power at all merely because he was a director. Simonds, J., referred to the argument, stating that it was a question of some difficulty which he did not propose to determine in that case. There was clearly in his opinion a good deal to be said for and against the proposition, but he did not enter upon any discussion of it. The point is a nice one which may well raise its head again when sub-s. (3) of s. 214 is again called in aid. It may well be said that in general the books and papers of a company cannot be said to be in the custody or power of any individual director of the company. It is to be noted that the sub-section does not require them to be in his custody *and* power, but only in the one or the other. Moreover it is arguable that in a particular case or for a particular purpose the words might be applicable even though no general proposition could be supported, and that so far as s. 214 (3) is concerned the provisions therein contained would be in danger of being unreasonably modified or completely stultified by reason only of the accident that relevant documents are under the control of a company. These interesting questions however remain for a future decision, and I cannot deal with them here to-day.

A Conveyancer's Diary.

Incidence of Loss occasioned by Breach of Trust.

I HAVE recently had to consider the question as to the incidence of a loss incurred in the administration of a trust estate by the trustees having, under a mistake, paid part of the trust funds to some person not entitled to receive it.

I have found that the law on this subject is most lucidly stated in "Withers on Reversions." In that valuable treatise the learned author in his chapter on "Equities" considers exhaustively the question of where the loss should fall when trustees have made a payment to the wrong person.

I cannot do better than take the example which is there given of a legacy of £10,000 "settled or apparently settled" on A for life and subject thereto in equal shares for the ten persons of whom B is one.

Now, as the learned author points out (at p. 258) there are various ways in which a payment to B of his apparent share might have been wrongly made:—

(1) On a wrong construction of the document.

(2) To a person who incorrectly alleges that he is B.

(3) Without regard to a notice received by the trustees of a mortgage, sale, etc., by B.

(4) Without payment of, or allowance for, the duties payable on the death of A.

(5) In ignorance of the fact that an appointment in favour of B was void as being a fraud on the power under which B became entitled to share.

(6) In ignorance of a notice given to former trustees of an incumbrance by B.

The general rule in all such cases is that the loss falls upon the beneficiaries as a whole, but if there has been an

appropriation or setting aside, properly made, of a fund to answer, in part, the sum payable, or apparently payable, to B, the loss will fall upon that fund.

No doubt, in many cases, the trustees may be liable for a breach of trust, but they may not be able to make good the loss and consequently the loss must fall upon the other persons beneficially interested in the trust fund.

The rule generally applicable was laid down in the leading case of *The Liquidation Estates Purchase Co. Ltd.* v. *Willoughby* [1898] A.C. 321.

In that case the facts, so far as material, were that one Walker purchased property and resold it at a profit. Out of the profits he had to pay £50,000 to Kennedy, Willoughby and Paulet, who had advanced the deposit paid by him on purchasing the property. Kennedy's share of that was £12,000. Kennedy charged his £12,000 in favour of Norton, who gave notice of his charge to Walker. Notwithstanding the notice, Walker paid Kennedy. It was held by the House of Lords that Norton's assignees were not affected by the wrongful payment to Kennedy and were not obliged to treat the payment to Kennedy as a payment to them. The loss fell upon all the parties rateably.

Lord Halsbury, L.C., in his speech said: "I am unable to understand in what way Walker's improper use of his possession of the property realised by the re-sale can affect Norton's right or any person claiming under Norton. If, instead of handing it over to Kennedy he had been robbed of it, and all that remained of the property was insufficient to pay all the persons having rights under it, why should Kennedy's assignee be in a less favourable position for receiving his proportionate amount; because the whole fund had been diminished by the unlawful act of the robber? Can it make any difference that Walker, in defiance of his duty, thought proper to divert a certain sum of money from the gross fund in favour of Kennedy at a time when, to his knowledge, Kennedy had no right to receive it? What Norton, in right of Kennedy's previous rights, was entitled to, was the amount of his debt from Kennedy and why Norton should be selected as the victim of a loss to which he in no way contributed, I am unable to understand. Lindley, L.J., uses the phrase that he did not understand why Norton's loss should be thrown on the other adventurers. It appears to me that the words 'Norton's loss' involve the fallacious assumption that, in some way or another, the share which had once belonged to Kennedy, and which, by hypothesis, at the time of handing over to Kennedy, no longer belonged to him, must be so earmarked as already Norton's, that it became Norton's loss; but this, I think, is erroneous. If the whole fund created has been *pro tanto* diminished by an unlawful act of the person who, by the agreement of all the parties, was the custodian of the money, and the person through whose hands it was to be distributed, it appears to me that the observations to which I have referred might be retorted and it might with propriety be asked, why should the part of the loss which was a loss to the whole fund, be appropriated to one particular adventurer or the assignee of that adventurer? No one has ever yet explained what Norton did or what Norton omitted to do which made him more responsible for a loss of any part of the fund than any other of the adventurers, and I am therefore of opinion that on this point of the case the judgment of the majority of the court below is erroneous."

I may add that it appears from the authorities, that the relief to which a trustee might be entitled under s. 30 (1) and s. 61 of the T.A. 1925, cannot be claimed by a trustee who has misapplied trust funds by paying the wrong person, even where he has done that under an honest mistake (see *Re Windsor Steam Coal Co.* [1929] 1 Ch. 151); but a trustee might have recourse under s. 62 to the share of a beneficiary at whose instigation the wrongful payment was made.

Landlord and Tenant Notebook.

Duration of Surety's Liability.

In his judgment in *Ex parte Walton: re Levy* (1881), 17 Ch. D. 746, C. A. James, L.J., uttered a lengthy *obiter dictum* to the effect that disclaimer by a tenant's trustee in bankruptcy would not absolve a surety for the payment of rent. This opinion was based on his lordship's view of the bankruptcy law as a special law having as its sole object the distribution of an insolvent's assets equitably amongst his creditors and persons to whom he was under liability.

The case before the court concerned an underlease, however, and the position of a surety was not actually decided until *Stacey* v. *Hill* [1901] 1 Q.B. 660, C.A., supplied direct authority. And the *dictum* of James, L.J., did *not* become law, though the relevant statutory enactment now included the provision that a disclaimer should not, except so far as was necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights and liabilities of any other person. The guarantee sued on was to remain in force "concurrently with the lease" which had been disclaimed on the lessee's bankruptcy when less than one-fifth of the term had run; but it was pointed out that if the plaintiff's contentions were correct, he would obtain possession of the land and yet receive its rent from someone else; also that the defendant would have the ordinary surety's rights over against the bankrupt, who was to be released by the operation of the disclaimer.

This decision, since followed in *D. Morris & Sons, Ltd.* v. *Jeffreys* (1932), 49 T.L.R. 76, was recorded with something like pained surprise by the editor of the 17th edition of "Woodfall," and as the relevant passage is repeated in the current (23rd) edition it would appear that the shock has not yet worn off. But, generally speaking, it is consistent with the attitude of the courts towards sureties revealed by most authorities, the tendency certainly being to treat them as generously as possible.

It is, of course, part of the general law that a guarantor is discharged if the creditor and principal debtor modify their agreement. Where that agreement has been a tenancy agreement, the courts have shown marked willingness to apply the principle.

In *Whitcher* v. *Hall* (1826), 5 B. & C. 269, it appeared that the plaintiff had agreed to let and a tenant to take the milking of thirty cows at £7 10s. per cow per year, and the defendant had guaranteed the rent. Later on, the plaintiff and his tenant varied the arrangement: there were to be twenty-eight cows for half the year, and thirty-two for the other half. It was not suggested that this would affect profits either way. But it was held by a majority (Littledale, J., delivering a strong dissenting judgment) that the defendant had had a right to exercise his own judgment on this question, which right had not been respected; and the plaintiff had not proved the agreement relied on, but a subsequent one.

Holmes v. *Brunskill* (1878), 3 Q.B.D. 495, C.A., went much the same way. In this case the defendant surety had guaranteed the delivery up of a flock of sheep let with a farm, the tenancy being from year to year. In the course of, but too late in, the second year the plaintiff gave the tenant notice to quit; the tenant pointed out that it was bad, but at the interview agreed to surrender one specified field in consideration of a reduction of rent. Next year the tenant became bankrupt and was unable to comply with his agreement to deliver up the sheep. A jury found that the agreement surrendering the particular field had made no substantial or material difference in the tenant's capacity to carry out the obligation. Nevertheless, Denman, J., on further consideration held that a new tenancy had been created which was not covered by the guarantee. The Court of Appeal unanimously thought otherwise; but held, again by a

majority, that the question left to the jury should never have been so left, for the surety was the sole judge of whether his liability should continue. Brett, L.J., dissenting, considered that the doctrine of the release of suretyship was carried to the verge of sense and declined to assist in carrying it any further.

The position therefore is that it does not matter whether the tenancy has been varied or has been surrendered and replaced by another. The latter phenomenon was illustrated by *Tayleur* v. *Wildin* (1868), L.R. 3 Ex. 303. The guarantee sued on in this case ran: "This is to certify that I, the undersigned John Wildin of etc. will be responsible to William Tayleur Esq. of etc. for the rent of Leese Farm in the occupation of [the tenant]." The tenancy was a yearly one. The plaintiff gave notice to quit when rent was in arrear in September, 1865; but on the arrears being satisfied in March, 1866, the notice was "withdrawn." There is, of course, no such thing as a withdrawal of a valid notice to quit. It was accordingly held, when rent was again in arrear and the surety was sued, that this was not the same tenancy as that of which he had agreed to guarantee the rent.

Can a surety for a tenant under a periodic tenancy determine his liability by notice in the absence of provision to the contrary? The authority of *Re Crace: Balfour* v. *Crace* [1902] 1 Ch. D. 733, which actually dealt with fidelity guarantee, suggested that he might, consideration being divisible. The matter was tested in *Wingfield* v. *De St. Croix* (1919), 35 T.L.R. 432. The plaintiff had, in 1916, let a cottage to the defendant's gardener, the defendant agreeing to guarantee its rent for three months and "from week to week thereafter." Some four months later the gardener left the defendant's service but not the plaintiff's cottage; the latter, however, consented to the continuance of occupation. But, at the same time, the defendant gave the plaintiff a week's notice to determine the guarantee, and when, at a later date, rent was in arrear, it was held that this notice was effective.

In conclusion, the difference between the position of the surety for a natural tenant who becomes bankrupt and whose trustee disclaims may be contrasted with that of a surety who guarantees a lease to a company which is wound up. Formerly, disclaimer by a trustee in bankruptcy and dissolution of a limited company, though different processes, had the same effect on the surety's liability. This was demonstrated by *Hastings Corporation* v. *Letton* [1908] 1 K.B. 378, when the only solution which a somewhat puzzled court could find was that on dissolution of a corporation its lands reverted to the grantors. But since the passing of the Companies Act, 1929, made them *bona vacantia*, and s. 267 (1) introduced the right of disclaimer by leave, the position of companies' sureties has changed. The language of the section is much the same as that of the Bankruptcy Act, 1914, s. 54, but the effect is different in that a liquidator, unlike a trustee in bankruptcy, runs no risk of incurring personal liability. So, while there is authority that in the case of bankruptcy injury to third parties is not a consideration in the resolution of a question of leave to disclaim, Maugham, J., pointed out in *Re Katherine et Cie, Ltd.* [1932] 1 Ch. 70, that a disclaimer in liquidation was quite a different matter; and in that case, in which premises had been let to a company which had gone into liquidation in the third year of an eight and threequarter-year term, his lordship exercised his discretion by refusing to allow disclaimer.

It is useful to point out that both in bankruptcy and on the winding-up of a company a disclaimer "shall operate to determine, as from the date of the disclaimer, the rights, interest *and liabilities* of" the bankrupt or company, and that it is only "except so far as is *necessary* for the purpose of releasing" the bankrupt or company that it is not to affect the rights or liabilities of any other person. Now the right of a surety, when called upon to perform his obligation, to demand reimbursement by the principal debtor may often be worth very little from a commercial point of view; but it is none the less a legal right, and whilst it exists there is a corresponding liability on the principal debtor. I think that when James, L.J., uttered the *dictum* to which reference is made at the commencement of this article, he perhaps lost sight of the fact that if the object of the bankruptcy law was to distribute assets those assets would be less if this liability were not extinguished. At all events, the more recent legislation from which I have just quoted very carefully ensures that where the release of a bankrupt or company so demands this liability towards the surety shall be determined, together with the liability to the principal creditor. Hence, both rights and liabilities of sureties remain liable to be "affected." Whether it be the "sole" object or not, present-day legislation does extinguish the bankrupt's or company's liabilities subject, when so provided, to leave being given; and it seems impossible to contend that when a debt or default has gone, the liability of someone else to answer for that debt or default can continue to exist.

Our County Court Letter.

LIABILITY FOR SHEEP WORRYING.

In a recent case at Shipston-on-Stour County Court (*Berry* v. *Taylor*) the claim was for £18, the value of three ewes and five lambs, which had died on the 27th February, 1938. The plaintiff's case was that he had kept fifty-six in-lamb ewes in a field, where, on the above date, a brown lurcher dog was seen attacking the flock. The sheep were one-year old Cheviots, worth £3 each. The dog was later identified at the defendant's house, and was subsequently destroyed. The defendant's case was that the dog was at home at the time when it was alleged to have been in the plaintiff's field. The dog had been used for seven or eight years for shepherding, and was very quiet. The only reason for having it destroyed was that the plaintiff had threatened to shoot it. The cause of death of one ewe was water disease and had nothing to do with the defendant's dog. His Honour Judge Kennedy, K.C., gave judgment for the plaintiff, with costs.

OBSTRUCTION OF SEPTIC TANK.

In *Day* v. *Holtam and Wife*, recently heard at Cheltenham County Court, the claim was for £50 as damages for nuisance, including special damage of £3 10s. as the cost of erecting a temporary privy, and £3 5s. as the cost of cleaning it for thirteen weeks at 5s. a week. The counter-claim was for £37 in respect of damages to the defendant's property by reason of the overflow from a septic tank owing to excessive user. The plaintiff's case was that, as the owner and occupier of premises, known as "Restcroft," he was entitled to use, jointly with the defendant, a septic tank and soak-way situated on the defendant's premises, known as "Tutlands." In December, 1937, or January, 1938, the defendant obstructed the line of pipes, whereby the plaintiff was unable to use his lavatory. A temporary privy was therefore erected, and was used for three months. In April, 1938, the plaintiff and a friend examined the inspection chamber and pulled out a stick with sacking on the bottom. On its removal, the sewage rushed past into the septic tank. The obstruction was replaced by the defendants and continued until May. Nothing but domestic waste water was sent through to the septic tank, and the milk swillings from the plaintiff's dairy were disposed of elsewhere. The defendant's case was that the septic tank was only designed for household use, but the plaintiff had made excessive user of the tank by disposing of the water used for washing the dairy utensils from eight cows. The overflow had damaged the defendant's orchard and a gate and fence had had to be replaced. The only reason for plugging the pipe in April was that the tank required cleaning out. On the second occasion it was desired to force a settlement of the negotiations

for restoring the tank to its proper condition. His Honour Judge Kennedy, K.C., was not satisfied that the female defendant was responsible for the obstruction. Judgment was, therefore, given in her favour on the claim. It was held that, although the septic tank was not in order, the male defendant had deliberately stopped the plaintiff's use of the drain, which was only used by the plaintiff for domestic purposes. Judgment was given for the plaintiff against the male defendant on the claim, with costs. Judgment was given for the plaintiff on the counter-claim, with costs against both defendants.

THE RECOVERY OF TOTALISATOR BETS.

In *Tote Investors Ltd.* v. *Stollery*, recently heard at Ipswich County Court, the claim was for £30 11s. as money paid for the defendant at his request between the 2nd July and the 8th July, 1937. The plaintiffs' case was that they were agents for members of the public in making bets on approved horse-racing courses by means of the totalisator. The defendant rang up the plaintiffs' Ipswich office, from which the bets were transferred, *via* the Newmarket head office, to the racecourse. All the money was placed with the totalisator before the races, and there was a statutory obligation upon the Racecourse Betting Control Board to distribute the totalisator pool. This could not be done if clients demanded their money back. The plaintiffs were bound to pass on stakes to the Board, without deduction of commission from the individual client. The plaintiffs received their commission from the Board in due course. The defence was that the stakes were a debt of honour, and were irrecoverable under the Gaming Acts. His Honour Judge Hildesley, K.C., held that betting by means of the totalisator was a legal transaction. Judgment was given for the plaintiffs, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

INVALID NOTICE OF CLAIM.

In *Winchester* v. *T. Walsh & Co. and Coppin (Third Party)* at Dartford County Court, the applicant was a plasterer employed directly by the third party and indirectly by the respondents, who were contractors. On the 26th June, 1937, the applicant fell from a scaffold and fractured his left heel. Compensation was paid by the third party at 30s. a week until the 13th November, but incapacity had not then ceased. The third party's case was that, although he had paid £31 in compensation, he could not really afford it, and he was now only earning £3 14s. a week. Moreover, the applicant had only worked for him for eight days, but had not made a claim within that period. If the third party were liable, there might be a question whether he could claim indemnity from the respondents, owing to the scaffold being broken. The respondents' case was that, as notice of the accident had not been given within the eight days, the applicant had not complied with s. 14 (1) of the 1925 Act. His Honour Judge Sir G. B. Hurst upheld the objection, and no award was made.

ALLEGATION OF FRAUDULENT CLAIM.

In *Heywood* v. *Exhall Colliery Co., Ltd.*, at Coventry County Court, the applicant's case was that her late husband was injured in 1931, when he crushed his right wrist between a tub and a tree. Compensation was paid for 140 weeks amounting to £321, and the wrist became worse and discharged periodically. The deceased developed a tubercular condition, and died on the 23rd December, 1937. It was contended that the condition was accelerated by the injury, as the medical evidence was that the poison from the wrist injury had set up a tubercular condition. Alternatively, the wrist injury was a contributory cause of the condition. The respondents' case was that the injury to the wrist was not caused by the alleged accident, as the wrist showed no sign of crushing. Inquiries from a deputy and another workman had led to the belief that the compensation had been paid in pursuance of a fraudulent claim. His Honour Judge J. H. D. Hurst held that, although there was no evidence that the deceased had deliberately deceived the respondents, there was no proof of an accident within the Acts. In the circumstances, the payment of compensation did not constitute an admission of liability by the respondents. No award was made. See *Nomeracsky* v. *Canterbury Dressing Works* (1928), 21 B.W.C.C. 41, as to the circumstances in which payments of compensation are not an estoppel, and the respondents are nevertheless entitled to set up that the accident (if any) did not arise out of and in the course of the employment.

Practice Notes.

WRIT OF SUBPŒNA.

Order XI, r. 1, does not apply to the service of a writ of subpœna under the Crown Suits etc. Act, 1865, s. 37. In a revenue suit against a British subject resident abroad (except in Scotland and Ireland), the informant may sue out a writ of subpœna endorsed with a statement that the writ is for service out of the jurisdiction. The master, on being satisfied by affidavit that the writ was personally served, or of certain other matters, may order that the informant be at liberty to proceed. Before obtaining judgment, the informant must prove his claim. To serve such a writ out of the jurisdiction no leave is required: *Attorney-General* v. *Prossor* [1938] 2 K.B. 531; 82 Sol. J. 433.

Prossor, after his failure to make a return, was assessed on his wife's income over many years. Resident in France, he ignored the assessments. In 1935, after thirteen years, a writ of subpœna was served on him: no appearance entered, the Crown proceeded to obtain judgment. In 1937, while he was over here on a visit, bailiffs came to arrest him; the sum involved, £4,000, was raised with difficulty. Prossor sued the Crown to set aside the proceedings on the ground that the writ had not been validly served.

Now, by Ord. LXVIII, r. 1, the Rules of the Supreme Court do not apply, *save as expressly provided*, to revenue proceedings. Rule 2 makes certain procedural orders applicable. Rule 3 (added in 1932) states: "Order XI . . . shall apply, as far as it is applicable . . . to proceedings on the revenue side of the King's Bench Division." Did this rule take away the power given by s. 37 of the Act of 1865, of entertaining proceedings where a writ had been served out of the jurisdiction, for which no leave was required?

The Court of Appeal held that the language of r. 3 was "singularly inapt" to produce the radical result of repealing or amending s. 37; for the anomalous result would follow that in so far as leave were required, a writ of subpœna would come under Ord. XI, while certain matters would still have to be proved under s. 37, before the action could proceed.

What, then, was the object and the effect of r. 3? Before 1932 certain machinery had been adopted for service of documents where conventions for the purpose had been made with foreign countries. That machinery, however, could only be used where leave had been given to serve out of the jurisdiction. Order XI, r. 11, was accordingly amended in 1932 to apply to cases where leave was not required: one such case was proceedings under s. 37 of the Act of 1865; and at the same time, r. 3 was introduced into Ord. LXVIII. Proceedings on the revenue side would henceforth have the advantage of that machinery for the service of documents. The object, therefore, of Ord. LXVIII, r. 1, was to apply not Ord. XI, but Ord. XI, r. 11, to revenue proceedings. Although Clauson, L.J., thought that "so read," the rule was "perfectly intelligible and is not inapt for dealing with the matters in hand," it is respectfully submitted that the rule might have been drafted with greater lucidity.

To-day and Yesterday.

LEGAL CALENDAR.

7 NOVEMBER.—One of those crises which boil up periodically in the legal world nearly brought Gladstone's Government to grief in 1871. A statute of that year provided for four paid members of the Judicial Committee of the Privy Council, two of whom were to have been judges of the High Court. Smith, J., of the Common Pleas, accepted to fill one but nobody could be found for the other, four judges in succession declining. In these circumstances Sir Robert Collier, the Attorney-General, came to the rescue. On the 7th November he was appointed to the place left vacant in the Common Pleas by Smith, J., and after a brief token sojourn there he went to the Privy Council. This technical ingenuity raised such a storm that a motion condemning the Government was nearly passed in the Lords.

8 NOVEMBER.—On the 8th November, 1864, a compliment unparalleled in legal history was paid to Antoine Berryer, the illustrious French advocate, when the Bar of England gathered in Middle Temple Hall to entertain him to a sumptuous banquet. At the age of seventy-four he stood forth in the eyes of the world as the incarnation of the ideal of advocacy, one who all his life had unflinchingly defended both tradition and liberty. In the ancient hall the Attorney-General presided, while crowded around him sat the flower of the English Bench and Bar to do honour to "the illustrious citizen, the distinguished patriot, the great orator and the unrivalled advocate" who was their guest.

9 NOVEMBER.—When on the 9th November, 1769, the Sheriffs of London received a warrant to hang John Doyle and John Valline at the most convenient place near Bethnal Green Church, they were seized with a legal doubt, for the Recorder had sentenced them to be hanged at "the usual place," and that was Tyburn. They petitioned the King for enlightenment: they took eminent counsel's opinion; finally the case was put before the twelve judges. At last, after a month's delay, Doyle and Valline were hanged at Bethnal Green, but the Recorder never afterwards said "the usual place" in passing death sentences.

10 NOVEMBER.—On the 10th November, 1886, Vice-Chancellor Bacon, still hale and hearty at the age of eighty-eight, resigned from the Bench.

11 NOVEMBER.—Chief Baron Richards died on the 11th November, 1823, after nearly ten years' service in the Court of Exchequer. Though not a brilliant lawyer, he was a sound one, and he made an excellent judge. Probably an early friendship with Lord Eldon, formed in practice at the Chancery Bar, helped him on in his career. In later years he often deputised for the Chancellor as Speaker of the House of Lords.

12 NOVEMBER.—On the 12th November, 1666, Pepys, wandering round the burnt-out ruins of St. Paul's, saw the body of Robert Braybrooke, a fifteenth-century Bishop of London, uncovered, "his skeleton with the flesh on but all tough and dry like a spongy dry leather or touchwood all upon his bones, his head turned aside. A great man in his time and Lord Chancellor and now exposed to be handled and derided by some though admired for its duration by others. Many flocking to see it."

13 NOVEMBER. On the 13th November, 1765, Lieutenant Patrick Ogilvy was hanged at Edinburgh for the murder of his brother, with whose wife he had carried on an intrigue. He was escorted from the Tolbooth by the City Guard with their Lochaber axes and the magistrates with their white staves; up the Lawnmarket, down the West Bow to the gallows in the Grassmarket. The soldiers of his old regiment, with whom he was very popular, were confined to their quarters in the Castle for fear of a rescue When he was turned off the ladder the rope slipped and he fell to the ground. He was immediately carried up and thrown off again but not before he had time to cry out in a loud voice that he died an innocent man.

THE WEEK'S PERSONALITY.

In his later years on the Bench, Vice-Chancellor Bacon became something of a monument or an institution. Born in 1798, called to the Bar barely a fortnight after Lord Eldon resigned the Great Seal, a silk of some years' standing when Dickens published his great attack on the Court of Chancery in "Bleak House," he was already old when in 1870 he succeeded Sir William James as Vice-Chancellor. But the years had left him far from moribund, and for sixteen years he stood out as one of the most forceful and lively figures in the judiciary. The style of his judgments displayed considerable literary distinction and the sketches or caricatures with which he sometimes ornamented the notes which he sent up to the Court of Appeal were both skilful and amusing. In one case his notes consisted of nothing but a life-like drawing of the appellant with the words "This man is a liar." In court his sense of humour was always ready. Once a grave leader was reading an affidavit by an old man which began "I am eighty-two years of age and have had eighteen children and no more." "Give him time," interrupted the judge, "Give him time." Bacon survived his retirement for many years and died in 1895.

FIT AND FASHION.

A proposal has lately got about that a panel of women dress experts should be available to assist puzzled judges called upon to determine disputes as to the fit, finish and fashion of various feminine garments. A very short time ago, a typist from the office of Bow County Court was called before the seat of judgment to give an opinion on such a problem. The French, I believe, do not hesitate to avail themselves of the advice of skilful ladies in these matters. I particularly like the report which such an expert once presented to a Paris Court in the case of a dispute depending on the question whether a certain bodice should have matched a particular skirt or its border. It ran thus: "Though it might be true in principle that the custom was to make the bodice correspond with the skirt, yet in fact good sense and good taste concurred in justifying the proceedings of Madame Troyes, who, emancipating herself from the trammels of routine, boldly dared to substitute for the happy accomplishment of her object the rich and tasteful design of the border instead of the mean and paltry one of the skirt." I hope the typist of Bow expressed herself as nobly.

PERSONAL APPEARANCE.

In her long fight before Mr. Justice Bennett, Mrs. Borders has set a new standard for litigants in person, and all over the Chancery Division the judicious have been saying that should she come to the Bar she would not lack confident clients. Not the skill of Mrs. Weldon herself, whose perennial disputes brought her constantly before the Court of Appeal in the days of Lord Esher, and whose memory forty years have not effaced, could have stood before her. One is reminded of the gentleman who, conducting his own case before Lord Lyndhurst, began his speech by saying that he was afraid before he sat down he would give some awkward illustrations of the truth of the saying that he who acts as his own counsel has a fool for his client. "Ah," replied the judge pleasantly, "don't you mind that adage: it was framed by the lawyers." In support of that, one may cite the case of the prisoner who, dissatisfied with his counsel's efforts, took the case out of his hands, conducted it and was acquitted, to be told by the judge that had he been represented he would certainly have been convicted.

Notes of Cases.

Court of Appeal.

***In re* a Debtor (No. 441 of 1938); *Ex parte* the Petitioning Creditor *v.* The Debtor.**

Greene, M.R., Scott and Clauson, L.JJ.
21st October, 1938.

BANKRUPTCY—PETITION—PERSONAL SERVICE—DOCUMENT DELIVERED IN SEALED ENVELOPE—WHETHER SUFFICIENT—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 5—BANKRUPTCY RULES, 1915, rr. 155–159.

Appeal from Mr. Registrar Kean.

On the 2nd June, 1938, a bankruptcy notice founded on the debtor's failure to comply with a bankruptcy notice was presented. On the 8th June an order was made giving the petitioning creditor leave to serve on the debtor personally at a named address in Paris or elsewhere in France a sealed copy of the petition and a sealed copy of the order. By an order endorsed on the petition the hearing was fixed for the 8th July. On the 25th June at the address named an employee of a firm of detectives delivered to the debtor a sealed envelope addressed to him by name containing a sealed copy of the petition and a sealed copy of the order. Outside the envelope there was no reference to the contents. Immediately afterwards the debtor's solicitors in London received a letter from his brother enclosing the envelope and its contents. At the hearing of the petition this brother gave evidence, which the registrar did not accept, that it was not to the debtor that the envelope was handed. The registrar dismissed the petition, saying that but for the fact that the documents were delivered in a sealed envelope he would have been satisfied that there had been good personal service. The petitioning creditor appealed.

GREENE, M.R., referred to the Bankruptcy Act, 1914, s. 5 (1) and the Bankruptcy Rules, 1915, rr. 155, 156 and 158, and said that the appellant had argued that here there had been physical delivery. But the essential thing in service (i.e., that the documents served should be brought to the personal knowledge of the person concerned) had not been complied with. The appellant had suggested that in the case of a bankruptcy petition the rule was not so strict as in the case of a writ (R.S.C., Ord. IX, r. 2). In the case of a writ the method of service was well known ("Annual Practice," 1938, p. 61). In the case of a bankruptcy notice nothing relaxed the same strict requirements. The appellant had also urged that the inference should be drawn that the contents of the envelope actually came to the debtor's knowledge because the envelope was opened and was addressed to him. But such inferences could not be drawn in a matter of so strict a nature as service. Unless it was established beyond possibility of doubt that the document came into the hand of the person served in such a way that its nature was brought to his mind the court should not draw such inferences. His lordship, however, was not laying down any general rule as to the circumstances in which service might be proved despite delivery in a sealed envelope (e.g., if the envelope were opened by the addressee and the contents inspected in the server's presence). But from the evidence in the present case the court should not draw any inference as to whether or not the documents came to the notice of the person in question. This was a case where a slip had been made in the matter of service and the registrar should not have dismissed the petition but should have given facilities for remedying it. That could have been done by fixing a different date for the hearing and amending the order endorsed on the petition and the order for service out of the jurisdiction so far as they dealt with the hearing. The petitioning creditor would then have been entitled to serve the debtor. As to costs, the petitioning creditor had been responsible for proceedings taking place at a time when the necessary foundation for them (i.e., service) was absent and there was no reason why the registrar should not have ordered him to pay the costs. The order should, therefore, be discharged save as to costs. The petition should be referred back to the registrar that a new date might be fixed and the consequential order made providing that that date should be effective notwithstanding what was said in the endorsement. That would involve the making of a corrected endorsement. There would have to be a new order for service out of the jurisdiction. There would be no costs of the appeal awarded on either side.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *J. B. Blagden; Serjeant Sullivan*, K.C., and *G. Kingham*.

SOLICITORS: *L. A. Hart; Bowkers*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Sharp *v.* Avery.

Greer, Slesser and MacKinnon, L.JJ.
21st October, 1938.

NEGLIGENCE — ROAD ACCIDENT — ONE MOTOR CYCLIST FOLLOWING ANOTHER—DUTY OF LEADER.

Appeal from Macnaghten, J.

The plaintiff, S, was riding on the pillion of a motor-cycle driven by one K, travelling after dark on the road between London and Southend and following at a distance of about 8 or 9 yards a motor-cycle driven by the defendant A, who, because he knew the road, was, by arrangement with K, leading the way. The defendant had not got his lights full on, and at a left-hand bend in the road he went straight forward onto a piece of rough ground. He thereupon applied his brakes and the motor-cycle following came into collision with his vehicle, the plaintiff being injured. The plaintiff was awarded damages.

GREER, L.J., dismissing the defendant's appeal, said that there had been lack of reasonable care on the defendant's part amounting to breach of duty to those behind him. To the plaintiff, the man on the pillion, it was indifferent whether or not the driver of his vehicle was also to blame for he could sue either or both. There was a duty on the defendant to take reasonable care not to put the other two into danger.

SLESSER, L.J., agreeing, said that where a person by his conduct invited another to rely on his skill he might be liable if he failed in that skill. Further, the pillion rider was so closely and directly affected by the defendant's act that it was reasonable to say that he had him as well as the driver in mind as being affected by his offer. Moreover, the defendant's was continuing negligence.

MACKINNON, L.J., agreed.

COUNSEL: *Beyfus*, K.C., and *Berryman; McIntyre*.

SOLICITORS: *Berrymans; A. H. Hepburn*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

The "Arantzazu Mendi."

Slesser, Finlay and Goddard, L.JJ.
1st November, 1938.

INTERNATIONAL LAW—CIVIL WAR IN FOREIGN COUNTRY—ONE PARTY RECOGNISED AS *De Jure* GOVERNMENT OF WHOLE COUNTRY—OTHER PARTY RECOGNISED AS *De Facto* GOVERNMENT OF TERRITORY HELD—WHETHER *De Facto* GOVERNMENT FOREIGN SOVEREIGN STATE.

Appeal from a decision of Bucknill, J.

In May, 1937, the ship "Arantzazu Mendi" of Bilbao sailed from Barry. Spain was then in a state of civil war and Bilbao was held by the Republican Government. On the 19th June, 1937, the Nationalist forces captured Bilbao. On the 28th June, 1937, in pursuance of a decree of that date, the Republican Government requisitioned the ship, which reached London in August. On the 24th August, 1937, the owners issued a writ *in rem* for possession of the ship, which

was accordingly arrested. On the 2nd March, 1938, the Nationalist Government by decree purported to requisition the ship. On the 23rd March, 1938, the Assistant Spanish Consul in London on behalf of the Republican Government served on the owners a formal notice of requisition. On the 5th April, 1938, the accredited sub-agent of the Nationalist Government also served on them notice of requisition. On the 13th April, 1938, the Republican Government issued a writ *in rem* for possession of the ship and a further warrant of arrest was served on the ship. The owners entered an appearance to the writ. The Nationalist Government also entered a conditional appearance, but on the 7th May, 1938, filed a notice of motion to set the writ aside. The Secretary of State for Foreign Affairs replied to a letter sent by the Registrar under the court's direction to the following effect: (1) His Majesty's Government recognised Spain as a foreign sovereign state. (2) His Majesty's Government recognised the Government of the Spanish Republic as the *de jure* Government of Spain. (3) No other Government was so recognised. (4) The Nationalist Government was in conflict with the Republican Government and was seeking to overthrow it and to establish authority over the whole of Spain. (5) His Majesty's Government recognised the Nationalist Government as exercising *de facto* administrative control over the greater part of Spain. (6) The Nationalist Government exercised administrative control over all the Basque Provinces (where Bilbao was situated). (7) No other recognition had been accorded to the Nationalist Government. (8) The Nationalist Government was not subordinate to any other Government in Spain. (9) The question whether the Nationalist Government was to be regarded as a foreign sovereign state was a question of law to be answered in the light of these statements with regard to the particular issue involved. Bucknill, J., set aside the writ, holding that the Nationalist Government was in law for the purpose of the present case a foreign sovereign state.

SLESSER, L.J., dismissing the Republican Government's appeal, said that the Nationalist Government was a foreign sovereign state. Any doubts had been determined by *A. M. Luther* v. *Sagor* [1921] 3 K.B. 532. The Nationalist Government had shown enough interest in the ship for them to be compelled to come before the court and defend that interest. It was impleaded and was entitled to rely on the general rule.

FINLAY and GODDARD, L.JJ., agreed.

COUNSEL: *Pilcher*, K.C., *O. Bateson* and *J. Foster*; *Sir Robert Aske*, K.C., *Naisby* and *Valls*.

SOLICITORS: *Petch & Co.*; *H. A. Crowe & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

British Thomson-Houston Co. Ltd. *v.* Tungstalite Ltd.

Simonds, J. 18th October, 1938.

PATENTS AND DESIGNS—ACTION FOR INFRINGEMENT—PROCEDURE—LIMITATION OF TESTS AND EXPERIMENTS—R.S.C., Ord. LIIIA, r. 21A (2) (*d*).

By a procedure summons under Ord. LIIIA, r. 21A, in an action in respect of alleged infringement of letters patent, the plaintiffs sought that an order should be made in the following form. The plaintiffs were to be directed within a stated time either to deliver to the defendants a list of experiments made for the purposes of the action on which they proposed to rely on the issue of infringement, or to give notice in writing to the defendants that they did not propose to rely on any such experiments on that issue. The defendants were to be directed either to deliver to the plaintiffs a list of experiments made for the purposes of the action on which they proposed to rely on the issue of validity of the letters patent, or to give notice in writing to the plaintiffs that they did not propose to rely on any such experiments on that issue. There was provision for answering experiments.

SIMONDS, J., referred to Ord. LIIIA, r. 21A (2) (*d*) and said that there might be some delay, but not such as to be material. The order was something of an experiment, but might result in a substantial saving of expense. His lordship then dealt with the delivery of statements under Ord. LIIIA, r. 21A (2) (*b*) and said that in the circumstances of this case he would adhere to the form settled in *Fraser* v. *Simpsons* (*Piccadilly*) *Ltd.* and *Platinum Products Ltd.*, 54 R.P.C. 199.

COUNSEL: *W. Trevor Watson*, K.C., and *Marlow*; *Shelley*, K.C., and *Aldous*.

SOLICITORS: *Bristows, Cooke & Carpmael*; *Aird, Hood & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Bradshaw; Blandy *v.* Willis.

Bennett, J. 27th October, 1938.

HUSBAND AND WIFE—MAN AND WOMAN LIVING TOGETHER—REPUTATION OF BEING MARRIED PERSONS—CHILDREN—WOMAN'S SURNAME SAME AS MAN'S IN BIRTH CERTIFICATES—SUBSEQUENT MARRIAGE CEREMONY AFTER BANNS—PARTIES DESCRIBED AS BACHELOR AND SPINSTER—WHETHER PRESUMPTION OF PREVIOUS MARRIAGE.

From 1890 one Bradshaw and a woman lived together as man and wife. They made statements to the effect that they were married persons and enjoyed that reputation. Before 1898 there were born to them five children in whose birth and baptism certificates the mother's surname was set down as Bradshaw. In 1898 they went through a ceremony of marriage after banns, being described in the register as bachelor and spinster respectively. There was evidence by one of the witnesses to the marriage, a solicitor, that Bradshaw had told him that he had already married the woman in Scotland. The parents being now dead, the question arose in this action (*inter alia*) whether two of the children, born in 1893 and 1894 respectively, were legitimate.

BENNETT, J., said that it had been submitted that despite the marriage certificate the court should decide that the parents were married before 1893 acting on the strong legal presumption of marriage arising on proof of cohabitation with a reputation of marriage and also on the evidence of their declarations. But the marriage certificate was an answer to that submission. Had the only evidence been the birth and baptism certificates and the statements of the parents, the court would have been bound to hold that there had been a marriage before 1893, but the marriage certificate rebutted any legal presumption. The parents would not have permitted themselves to be publicly described as bachelor and spinster if they had been validly married several years before.

COUNSEL: *Romer*, K.C., and *Roger Turnbull*; *Gover*, K.C., and *R. Goff*; *J. Sparrow*; *Winterbotham*.

SOLICITORS: *Speechly, Mumford & Craig*; *V. G. H. Hicks*; *Hunters*; *Reynolds, Son & Gorst*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Clay Hill Brick & Tile Co. Ltd. *v.* Rawlings.

Tucker, J. 19th October, 1938.

COMPANY—PURCHASE OF GOODS BY CUSTOMER—CHEQUE PAID TO MANAGING DIRECTOR—WHETHER A DISCHARGE—CHEQUE NOT PAID TO COMPANY'S ACCOUNT—CLAIM BY COMPANY AGAINST CUSTOMER FOR PRICE OF GOODS—WHETER MAINTAINABLE.

Action for the price of goods sold and delivered.

The defendant, Rawlings, on the invitation of one, Barber, managing director of the plaintiff company, Clay Hill Brick and Tile Co. Ltd., placed an order for bricks with Barber and

then gave him a cheque for £200 and subsequently two others for £75 each, made out to him personally, and which he cashed; the value of the bricks being £392 10s. After receiving the first cheque, Barber wrote to the defendant from his private address a letter headed "Re Clay Hill Brick Co. Ltd.," and *inter alia* telling the defendant that he could begin drawing bricks at once. Bricks were supplied periodically, and at each delivery a delivery order was issued as from the plaintiff company. After delivery had thus been taken of the bricks and the defendant had paid Barber the cheques totalling £350, he received an account for bricks from the company which aroused his suspicions. When the defendant gave his order for the bricks and paid the first two cheques Barber was managing director of the plaintiff company and chairman of the directors, but, having in the interval become bankrupt, he became manager of the company, and occupied that position when the defendant paid the last of his three cheques. The plaintiff company, while acknowledging that the defendant had paid the money to Barber in good faith, subsequently applied to the defendant for payment to them of the sum due to them for the bricks, and eventually brought the present action claiming the amount.

TUCKER, J., said that the question for decision, namely, whether, by paying the cheques to Barber, the defendant had discharged his indebtedness to the plaintiff company, was not free from difficulty. The company had supplied bricks for which they had not been paid. The defendant had received the bricks and had paid for them. Had he paid the proper person? His lordship found that the defendant had not really applied his mind clearly to Barber's position, but that, if he had done so, he would have understood from what Barber had told him that the latter owned the company, i.e., substantially all the shares in it. It was contended for the plaintiffs that Barber in fact had no authority to receive the cheques, and that, having no authority, he was not held out as having any, and that the payments made to him were accordingly no discharge. Nevertheless, although Barber did not hold the position which the defendant thought he did, yet, when the first two cheques were paid to him, he was chairman of the directors and acting as managing director, and later manager, of the company. It was, no doubt, true that he had no specific authority to receive cash; the company seldom received cash, and were not carrying on a cash business. While the managing director might not be the channel through which the company would normally be paid, that did not mean that the chairman of the directors had not authority to receive a payment tendered to him. It could not be said that to receive payment in cash was beyond his powers. While Barber, in the position which he held in the company, was an officer who would not ordinarily be empowered to receive a cash payment, he might be so empowered, as between himself and the defendant, by virtue of art. 12 of the company's articles, which provided that the directors might delegate to any one of their number or "to any manager . . . any of the powers . . . for the time being vested in the directors . . ." Having referred to *British Thomson-Houston Co., Ltd.* v. *Federated European Bank, Ltd.* [1932] 2 K.B. 176, and to the statement of the law in the note on p. 184, his lordship said that the result of that article was that, there being in fact power to confer on Barber the authority to receive cash, it must be taken that he in fact had the authority which he was purporting to exercise. That conclusion having been reached, it followed, from the decision in *Bradford & Sons* v. *Price Brothers* (1923), 92 L.J.K.B. 871, that the cheques given by the defendant were equivalent to cash. Accordingly the defendant had discharged his obligations to the company, and the action failed.

COUNSEL: *Linton Thorp*, K.C., and *Alban Gordon*, for the plaintiffs; *F. R. McQuown*, for the defendant.

SOLICITORS: *Thorp, Saunders & Thorp; Maude and Tunnicliffe*, for *Louch, Belcher & Co.*, Newbury.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law].

Brighty *v.* Pearson.

Lord Hewart, C.J., Charles and Macnaghten, JJ.
24th October, 1938.

ROAD TRAFFIC—EXCEEDING SPEED LIMIT—OPINIONS OF TWO POLICE OFFICERS—OBSERVATION OF EACH TAKEN AT DIFFERENT POINT OF ROAD—WHETHER EITHER OPINION SUFFICIENTLY CORROBORATED.

Appeal by case stated from a decision of Cambridge justices.

An information was preferred by the respondent, Pearson, charging the appellant, Brighty, with having at Cambridge driven a motor lorry along a public road at a speed greater than the maximum specified for its class in the First Schedule to the Road Traffic Act, 1934, contrary to s. 10 (1) of the Road Traffic Act, 1930. At the hearing of the information the following facts were proved or admitted: On the day in question a police constable called Long, on duty near a public house called the "Traveller's Rest," saw a lorry driven by the appellant pass him at a speed which he, Long, estimated at between 35 and 40 miles an hour, that speed being maintained under his observation for some 350 yards. The lorry was one for which the scheduled speed was 20 miles an hour. Long signalled to the appellant to stop, which he did. While Long was speaking to the appellant a police constable called Murphy rode up on a pedal bicycle. The lorry had passed him at a point farther down the road at a speed which he, too, estimated at between 35 and 40 miles per hour. Later he saw, when 300 yards from where Long was standing, that the latter had stopped the lorry. The distance between the two points at which the lorry passed Long and Murphy respectively was some 750 yards. In estimating the appellant's speed, neither constable relied on any stop-watch or speedometer, nor was there any reference to any specified or measured distance for calculating the speed of vehicles. It was contended for the appellant that, inasmuch as the opinion of each constable related to a different place, and the evidence of excessive speed at each place consisted solely of the opinion of one constable, there could, by virtue of s. 10 (3) of the Act of 1930 as replaced by s. 2 (3) of the Act of 1934, be no conviction. The justices held that, as the constables had the lorry under observation along the same stretch of road, the evidence of each constable constituted corroboration in law of the evidence given by the other, so that there was the evidence of more than one witness as required by those enactments.

LORD HEWART, C.J., said that the case was such as to make it impossible, in his opinion, to dismiss the appeal. At no moment, as the facts were found, was there observation of the same vehicle at the same moment by the two constables. What the interval was might be a matter of conjecture. It depended on the ambiguous phrase "later he saw" used in the case stated in referring to Murphy having seen the lorry pass him and then seen it stopped by Long. Section 2 (3) of the Act of 1934 provided: "A person prosecuted for driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment shall not be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of that witness the person prosecuted was driving the vehicle at a speed exceeding that limit." Here two persons had indeed been put forward in the capacity of witnesses, but at no moment was it possible to say that the effect of the evidence of one witness was corroborated by the effect of the evidence of the other witness. There was clearly a lack of continuity, a gap; and it was not profitable to speculate how great the gap had been. In a criminal case a conjecture unfavourable to the accused ought not to be made. Even if, as the justices found, the two constables had the lorry under observation along the same stretch of road, the observations were nevertheless not taken at the same time. The appeal must be allowed.

COUNSEL: *M. A. B. King-Hamilton*, for the appellant; *E. Garth Moore*, for the respondent.

SOLICITORS: *Amery, Parkes & Co.; Field Roscoe & Co.*, for *Guy W. Stanley & Shaw*, Cambridge.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Magnet Advertising Co. Ltd. *v.* Arrowsmith and Another.

Atkinson, J. 27th October, 1938.

CONTRACT—THEATRE—ADVERTISING SPACE IN PROGRAMMES LET TO ADVERTISING COMPANY—THEATRE CLOSED DURING CURRENCY OF ADVERTISING CONTRACT BECAUSE OF FINANCIAL LOSSES—WHETHER A BREACH OF ADVERTISING CONTRACT.

Action for damages for breach of contract.

By an agreement made in 1934, the defendant, one Arrowsmith, granted the plaintiff company *inter alia* the exclusive right of advertising in the programmes to be issued at the Balham Hippodrome for fifty-two weeks from the 17th December, 1934. As provided for by the agreement the term was extended to the 17th December, 1936, during which latter period the second defendant, one Martin, was in control of the theatre by agreement with Arrowsmith. From the 4th April, 1936, until after the 17th December, 1936, the theatre was closed down because it had been working at a substantial loss, and Martin on the 25th March, 1936, wrote to the plaintiffs to tell them that no further programmes would be issued from the 4th April. The plaintiffs contended that it was an implied term of their agreement with Arrowsmith that he or his assignee or successor would keep the theatre open during the currency of the agreement and of any renewal effected under its provisions. The plaintiffs claimed that through the closing down of the theatre they had been prevented from performing their contracts with tradespeople to whom they had let advertising space in the programmes, and that they would lose their revenue, and become liable in damages, under those contracts. The plaintiffs put as a ground for their claim against Martin that he was liable as having taken an assignment of the agreement between themselves and Arrowsmith. The defendants contended that there was no obligation to keep the theatre open, and that any right of advertising given by the agreement was subject to termination or suspension on the theatre's being closed. Counsel in argument referred to *Walton Hervey Ltd.* v. *Walker & Homfrays Ltd.* [1931] 1 Ch. 274; *Turner* v. *Goldsmith* [1891] 1 Q.B. 544; and *Conquest's Case* (1875), 1 Ch. D. 334.

ATKINSON, J., said that the plaintiffs argued that it was an implied obligation under the agreement that the theatre should be left open as a theatre for ordinary performances during the usual days of the week, and that the closing of the theatre constituted a breach of contract. Clause 6 of the advertising agreement provided for the making up to the plaintiffs subsequently of any period during the currency of the contract during which the theatre should be closed. Both parties apeared to have taken the view that that provision related only to a temporary closing of the theatre, and not to anything of the permanent nature of the closing which had actually taken place. The action was not brought to raise the question whether, if and when the theatre reopened, the plaintiffs would be entitled to a renewal of their contract. The plaintiffs had all along chosen to treat what was done as a breach of contract giving rise to damages. The contract was a printed one framed by the plaintiffs. The obligation to grant the plaintiffs advertising space in the programmes to be issued meant a grant of space in such programmes as might be issued. There were no words imposing on the defendants an obligation to issue programmes. How could a clause be read into the contract imposing on the defendants the obligation to keep open? The authorities laid down the principle that the court could not read a clause into a contract unless to do so was necessary in order to give to the contract the meaning which the court was satisfied both parties had intended. It could not be argued that in the circumstances, the theatre being run at a great loss, the defendants were obliged to keep it open. The plaintiffs' right was to have advertising space as long as the theatre was in fact open, and to have a right of extension if it should be closed for some temporary purpose. The action must be dismissed.

COUNSEL: *F. T. Atkins*, for the plaintiffs; *G. Beyfus*, K.C., and *Rodger Winn*, for the defendants.

SOLICITORS: *Cochrane & Cripwell*; *Mitchells*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Weston-super-Mare Licensing Justices; *Ex parte* Powell.

Lord Hewart, C.J., Charles and Macnaghten, JJ. 27th October, 1938.

LICENSING—ALTERATIONS TO LICENSED PREMISES—INCORPORATION OF ADJOINING PREMISES NOT LICENSED—IDENTITY OF LICENSED PREMISES RETAINED—REFUSAL OF JUSTICES TO SANCTION ALTERATIONS—VALIDITY—LICENSING CONSOLIDATION ACT, 1910 (10 Edw. VII and 1 Geo. V. c. 24), s. 71.

Rule *nisi* for *mandamus*.

The rule was granted at the instance of one, Powell, the licensee of a hotel at Weston-super-Mare, calling on the licensing justices for the Weston-super-Mare petty sessional division to show cause why a writ of *mandamus* should not issue commanding them to hold a transfer sessions meeting and at such meeting hear and determine an application by Powell, under s. 71 of the Licensing (Consolidation) Act, 1910, for the approval of the justices to certain alterations at the hotel. The grounds for the rule were that the justices had refused to hear and determine according to law the application made to them. The proposed alterations involved the incorporation of certain adjoining premises which had previously been entirely separate from the licensed premises, and an enlargement of the existing saloon bar. Plans of the proposed alterations had been duly deposited with the justices' clerk. The justices held that the contemplated alterations would not destroy the identity of the premises as already existing, and that the alterations were necessary and desirable, but they decided that, in view of *R.* v. *Isle of Wight Justices*, they had no power to grant the application, as the bulk of the alterations was to premises not already licensed. They were prepared to consent to the alterations so far as they related to the premises already licensed. It was contended in showing cause against the rule that under s. 71 justices had no jurisdiction to sanction alterations which involved an extension of the licensed premises, and that their powers were confined to alterations within the premises already licensed. It was contended in support of the rule that there was nothing in the section to limit the general powers of justices to approve plans in part involving an alteration to existing premises and in part including the taking in of adjoining land, so long as the identity of the premises was not lost as a result of the alteration. By s. 71 (1) of the Licensing (Consolidation) Act, 1910: "An alteration in any licensed premises in respect of which a justices' on-licence is in force, which gives increased facilities for drinking . . . shall not be made without the consent of the licensing justices given either at the general annual licensing meeting or at transfer sessions."

LORD HEWART, C.J., said that it was obvious that what was contemplated and desired by the licensee was not merely to make within the four walls of the existing premises certain alterations involving the ingredient of increased facilities for drinking but also, externally to those premises, to add on further premises in such a way as to increase yet again the facilities for drinking. Whatever might be the substantial merits of that scheme, and however desirable it might be that

inhabitants of and visitors to Weston-super-Mare should have facilities for drinking, it appeared to him (his lordship) that the justices had come to a correct decision on the materials before them when they decided to refuse the application. There appeared to have been some misapprehension as to the effect of s. 71 of the Licensing (Consolidation) Act, 1910. In his opinion the words "alteration in any licensed premises" meant what they said. They did not mean "alteration in any licensed premises accompanied by alterations in premises not licensed." The court was asked to issue a writ of *mandamus* commanding the justices to hear and determine the application. In his opinion, they clearly had heard and determined it. The rule must therefore be discharged.

CHARLES and MACNAGHTEN, JJ., agreed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *Valentine Holmes*, showing cause on behalf of the Commissioners of Customs and Excise; *Colin Duncan*, on behalf of the justices; *G. J. Lynskey*, K.C., and *Lyne*, in support.

SOLICITORS: *The Solicitor for Customs and Excise; Cameron, Kemm & Co.*, for *John Hodge & Co.*, Weston-super-Mare; *Godden, Holme & Ward*, for *Smiths, Ford & McFadyean*, Weston-super-Mare.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Daniels and Wife *v.* R. White & Sons Ltd. and Another.

Lewis, J. 3rd November, 1938.

FOOD AND DRUGS—CARBOLIC ACID IN LEMONADE—LEMONADE BOUGHT IN SEALED BOTTLE—ALLEGATION OF NEGLIGENCE AGAINST MANUFACTURER—BURDEN OF PROOF.

Action for damages for negligence and breach of warranty.

The plaintiff, James Daniels, and his wife claimed damages for negligence resulting in personal injuries from R. White and Sons Ltd., manufacturers of aerated waters, and for breach of warranty from Mrs. Beatrice Tarbard, licensee of a public house at which the plaintiff bought a bottle of lemonade manufactured by the defendant company. In July, 1937, Daniels purchased the lemonade, took it home, and drank it with his wife. They complained that the lemonade was not reasonably fit for human consumption in that it contained deleterious or noxious matter. On drinking the lemonade, the plaintiff and his wife experienced a feeling of burning and noticed a strange taste. Shortly afterwards they were both taken with retching, and were ill for some weeks afterwards. His lordship found, as facts, that Daniels asked Mrs. Tarbard specifically for "a bottle of R. White's lemonade"; that he received a bottle of that lemonade with its seal unbroken, and that the unconsumed contents of the bottle revealed the presence of a quantity of carbolic acid showing that the bottle when full had contained thirty-eight grains of the acid.

LEWIS, J., dealing with a submission made on behalf of the defendant company that there was no case for them to answer, said that counsel for the company had argued that the only evidence against them was that a bottle of their lemonade, which it had to be assumed was properly sealed and stoppered, had been purchased by Daniels and had contained carbolic acid, and that, as a result of their drinking those contents, the plaintiffs had suffered injury. Counsel prayed in aid a passage at the end of Lord Macmillan's speech in *Donoghue* v. *Stevenson* [1932] A.C. 562, at p. 622, and argued that Lord Macmillan was there saying that facts such as those in the present case were not sufficient to establish a *primâ facie* against the defendant company so as to shift on to their shoulders the burden of proving absence of negligence on their part. Counsel contended that Lord Macmillan was there saying that it was not sufficient in a case like the present merely to point to a defective article and to say that carbolic acid was not found in a bottle of lemonade unless "someone had blundered." The plaintiffs, it was argued, must go further and prove that the acid had found its way into the bottle because the defendants had not taken reasonable care to keep it out. On the other side it was argued that that dictum of Lord Macmillan's was *obiter*, the only question for their lordships in that case being the duty of a manufacturer to the ultimate purchaser or consumer of his product, and that it had not been necessary to go into the particular facts of that case because it had never been before the courts on the facts. Counsel for the plaintiffs argued that Lord Macmillan did not mean in that passage to include all such cases, and he pointed out that the passage, as interpreted by counsel for the defendant company, would place a very heavy burden on the consumer in any case where the defective article was enclosed in a container, was sealed up by the manufacturer and rendered incapable of being tampered with when it left the factory, and yet, when opened, was found to be poisonous. A plaintiff, it was said, confronted with such a difficulty, could not say more than that there was a sealed container which could not be tampered with, purported to contain a substance fit for consumption, and turned out to contain poison. It was contended that those circumstances were sufficient to establish a case of *res ipsa loquitur*. It was unnecessary, however, to decide the point, because, even assuming the burden of rebutting the inference of negligence to be on the defendant company, they had succeeded in doing so. A manufacturer's duty to the consumer was not to ensure that his goods were perfect, but to take reasonable care that no injury was caused to the consumer. There was evidence that the company had taken such care, and there must be judgment in their favour. His lordship then held that the husband, as purchaser, was entitled to recover damages from the second defendant for breach of warranty.

COUNSEL: *J. Busse*, for the plaintiffs; *P. L. E. Rawlins*, for the defendant company; *L. K. A. Block*, for the second defendant.

SOLICITORS: *Arthur Dollond & Co.*; *Wm. Webb & Sons*; *Crossman, Block & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Boyd *v.* Boyd.

Bucknill, J. 14th October, 1938.

DIVORCE—CONSTRUCTIVE DESERTION—HUSBAND'S CONVICTIONS FOR DEPRAVED CONDUCT—ABSENCE OF ESSENTIAL INTENTION TO DESERT—SUGGESTED GROUND OF CRUELTY.

This was a wife's undefended petition for divorce on the ground of desertion for a period of at least three years immediately preceding the presentation of the petition.

BUCKNILL, J., in giving judgment said that the petitioner was married on 29th April, 1923, to Charles Boyd, who was a widower with two daughters. A child was born of the marriage in August, 1925. In 1926, the respondent was convicted of the crime of incest with his daughter by the first marriage, and was sentenced to five years' penal servitude. When he came out of prison after serving his sentence, the petitioner forgave him and took him back to live with her, and, of course, thereby condoned the adultery in respect of which she could then have obtained a decree. The respondent did nothing to support the petitioner, but she continued to live with him, and in 1933 he was convicted of an indecent assault on a girl under thirteen years of age, and was sentenced to imprisonment with hard labour for twenty months. That was a terrible shock to the petitioner, and endangered her health. When he came out in 1935, after serving his sentence, he came back to see her and in effect asked to be taken back again. The petitioner felt that she could not trust him any more and refused to have any more to do with him. Under the

new Act, a decree of divorce could be obtained if the husband had deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition. The petition as filed charged the husband with desertion for a period of at least three years immediately preceding the presentation of the petition, which took one back to the time when he came out of prison for the second offence. Mr. John Latey, who put forward the case very clearly and cited *Thompson* v. *Thompson* (1901), 85 L.T. 172, and *Bosworthick* v. *Bosworthick* (1901), 86 L.T. 121, submitted that the present was a case of constructive desertion, that in effect the husband had behaved in such a way that his wife could not be expected to live with him any longer. To him, his lordship, it seemed that the essential element of desertion must be an intention to bring the cohabitation to an end. It might be that the husband had behaved so badly that his wife left him and it might be that his conduct amounted to cruelty, when the wife could get a divorce on that ground, but, before there could be a case of constructive desertion, the court must be satisfied that the conduct of the husband had been such as to show a clear intention on his part to drive the wife away. There must be an intention on the part of the person charged with desertion to bring the cohabitation to an end. There was no evidence in the present case of any such intention. The man seemed to be a sexual pervert who was unable to control himself, but there was no evidence that at any time he had ceased to wish to live with his wife. It was his wife, on the other hand, who had refused to live with him. Therefore, no case of constructive desertion had been made out. The petition would be adjourned for the petitioner to be advised whether the petition should be amended to include a charge of cruelty.

COUNSEL: *John Latey*, for the petitioner.

SOLICITORS: *S. A. Bailey and Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Reviews.

The Law of Trade Marks. By H. KEYNES TURNER, M.C., F.I.R.I., Solicitor and Patent Agent. 1938. Demy 8vo. pp. xxxii and (with Index) 358. London: The Solicitors' Law Stationery Society, Ltd. 25s. net.

Recent consolidating legislation renders the appearance of a work on the subject of Trade Marks particularly opportune, and practitioners dealing with this branch of the law should find this book a useful addition to their libraries. Apart from the usual statistical apparatus and the index, the work is divided into two approximately equal portions, containing respectively a competent exposition of the law on the subject, and the text of the Trade Marks Act, 1938, and the Trade Marks Rules, 1938. The important changes incorporated in the new legislation are concisely indicated in an introductory chapter to the former portion of the work, succeeding chapters dealing with the problems of this section of the law in accordance with a convenient classification of subject-matter. The new Act is not annotated section by section, but there is a series of cross-references from the text of the Act and Rules to the expository part of the book. References to the official Law Reports which are duly given in the Table of Cases might with advantage have been repeated throughout the work. The statement on p. 24 that in *Registrar of Trade Marks* v. *W. & G. du Cros Ltd.* the mark "W. & G." was allowed on the Register in script form, but that the plain initials were refused registration requires emendation, the House of Lords having restored the decision of Eve, J., to the effect that in neither form was the mark registrable.

Mr. A. O. Thomas, for many years chief associate at the Royal Courts of Justice, has retired. He received presentations from Judges' and barristers' clerks, and from officials of the Crown Office and Associates' Departments.

Sir John Simon. By BECHHOFER ROBERTS ("Ephesian"). 1938. Demy 8vo. pp. (with Index), 320. London: Robert Hale, Ltd. 12s. 6d. net.

A biography finished before the end has crowned its subject's work has necessarily something of the character of an interim order or a rule *nisi*. Within this limitation here is a very satisfactory work. Those who would learn all that is known of the public life of Sir John Simon, with something of his private life and early background, will find in the author a guide who will lead them undeviatingly along the paths of ascertained fact and authentic utterance. Even the complimentary speeches at the dinner with which his constituents celebrated his taking silk are set out or summarised. Simon's virtues are not dramatic, and his faults are not lovably obvious, so that his career does not lend itself to picturesque treatment. Hence there is a danger which the author does not always escape of allowing restraint in style to decline into flatness, though for the most part the quality of his workmanship is far above that usually displayed in politico-legal biography. This narrative will certainly give form to the world's conception of one whose brilliant intelligence and painstaking tenacity have been unremittingly applied to every task and occupation, whether at work or play. Still, there remains a certain remoteness in Simon's personality which has made him something of an enigma to his generation, and even so clearly defined a portrait is yet to a great extent a problem picture.

Books Received.

The Coal Act, 1938, *with the Coal (Registration of Ownership) Act*, 1937. By F. A. ENEVER, M.C., M.A., LL.D., of Gray's Inn, Barrister-at-Law, Legal Adviser and Registrar to the Coal Commission. 1938. Royal 8vo. pp. xl and (with Index) 496. London: The Solicitors' Law Stationery Society, Ltd. 37s. 6d. net.

The Solicitors' Diary, Almanac and Legal Directory for 1939. Edited by R. W. D. SANDFORD, B.A., Solicitor. Ninety-fifth year of publication. 1938. London: Waterlow & Sons, Ltd. Prices from 8s. to 15s. net.

The Yearly Supreme Court Practice, 1939. By P. R. SIMNER, C.B., a Master of the Supreme Court of Judicature, HAROLD G. MEYER, of the Inner Temple, Barrister-at-Law, H. HINTON, M.B.E., of the Supreme Court, and F. C. ALLAWAY, M.B.E., of the Chancery Division. 1939. Demy 8vo. pp. cccexcvii and 2,940 (Index, 432). London: Butterworth & Co. (Publishers), Ltd. 45s. net.

Obituary.

MR. G. K. KNIGHT-BRUCE.

Mr. Gordon Kennet Knight-Bruce, Acting Chief Justice of Tanganyika Territory, died recently at Dar-es-Salaam at the age of forty-seven. He was educated at Radley and Pembroke College, Oxford, and was called to the Bar by Gray's Inn in 1927. He was acting judge in Zanzibar before being appointed a puisne judge of Tanganyika Territory in 1936. Mr. Knight-Bruce edited Vol. IV of the "Zanzibar Law Reports."

MR. T. GILL.

Mr. Thomas Gill, secretary of the Solicitors' Benevolent Association, died at Gloucester Place, W., on Wednesday, 2nd November, at the age of seventy-eight. Mr. Gill, who was the eldest son of the late Mr. Thomas Gill, of the Manor of Treverbyn, Cornwall, was admitted a solicitor in 1885, but only took out a practising certificate for one year. He was appointed secretary of the Solicitors' Benevolent Association in 1911.

MR. A. C. JONAS.

Mr. Arthur Charlton Jonas, solicitor, formerly senior partner of the firm of Messrs. Jonas & Parker, of Salisbury, died at Fordingbridge on Friday, 21st October. Mr. Jonas was admitted a solicitor in 1889. He had been Clerk to the Commissioners of Taxes for New Sarum, and he was a Past President of the Gloucestershire and Wiltshire Law Society.

MR. T. H. MOORE.

Mr. Thomas Henry Moore, of Brixton, formerly managing clerk to the firm of Messrs. Hardisty, Rhodes & Lindner, of Adam Street, Adelphi, W.C., died on Friday, 4th November, at the age of eighty-six. Mr. Moore, who was admitted a solicitor in 1884, had been with his late firm for nearly sixty years. He retired earlier this year.

MR. J. F. SANDERS.

Mr. John Furse Sanders, solicitor, Town Clerk of South Molton, Devon, died on Thursday, 3rd November. Mr. Sanders who was admitted a solicitor in 1902, was Clerk of the Peace and Clerk to the Justices at South Molton.

MR. L. WOLFE.

Mr. Lionel Wolfe, solicitor, senior partner in the firm of Messrs. Lionel Wolfe & Hewitt, of Sunderland and Newcastle-upon-Tyne, died recently at Sunderland at the age of sixty-five. Mr. Wolfe was admitted a solicitor in 1909. He was a director of the Sunderland Football Club.

Societies.

The Clarke Hall Fellowship.

IS THE CRIMINAL TO BLAME—OR SOCIETY ?

The fourth Clarke Hall Lecture was delivered at Gray's Inn on the 27th October by Viscount Samuel, the chair being taken by the Home Secretary, Sir Samuel Hoare. In ancient or mediæval times, said the lecturer, dealing with the criminal was a simple matter, but a humane and rational age asked whether, after all, the criminal might not have a genuine grievance. He sometimes claimed that he had not made himself and could not help doing what he did. If that were so, the penal law had no moral basis and our system of justice would be fundamentally unjust. Every person was the outcome of prior pre-natal and post-natal causes. The personality, created by the past, was shaped by the present. The difficult problem of free-will could not be evaded as they had been by the man who said : " I will look my difficulties firmly in the face and pass on." It was an obvious fact that everyone did choose, every day and every hour. The self that acted could only act in accordance with its own nature and character, which were the outcome of causes operating in the past. But those prior causes were not all external to itself. Their effects had been fused into a new whole, which, once extant, in the universe, had its own power of choice, and the very exercise of that power helped to determine the later stages of the self. The philosopher could investigate to find out of what the self consisted, but the practical man had to recognise each individual as a person " on his own," responsible for what he did. It was not, therefore, true when the young criminal pleaded that he could not do other than he was doing. The heredity and environment which had given him the character that yielded to temptation had also given him a conscious will which might have enabled him to resist. A second answer to him was that the penal law in itself was one of the elements that helped to determine the choice. In considering the cause of action of any kind, then, three factors must be considered : the physical nature of the person who acted, the complex of influences brought to bear upon him by society throughout his life, and his own power of choice. Because social environment was plainly an important factor in individual action, it did not follow that it was all-important. Over against the very dangerous principle of " Tout comprendre, c'est tout pardonner " stood the other French saying, " Qui sauve le vautour est responsable de sa griffe."

Lord Samuel's answer to the question of his title was " Sometimes the one, sometimes the other, but usually both." Since 80,000 persons were tried for indictable offences in Great Britain every year, this answer should point to some course of action. Eugenics must consider what steps might be taken to encourage breeding from good types rather than bad, and to control the feeble-minded. These were specialised subjects, but environment raised questions of a more general character. A man was not born a saint or a gangster ; there was predisposition but not pre-destination. Society must frame a system which encouraged doing right and discouraged doing wrong. Education was the best instrument. Other things being equal, a nation well educated, whose upbringing included moral and physical training and character qualities, would have a lower percentage of crime than an uneducated nation. Other things being equal again, a youth whose parents and grand parents had been well educated in this broad sense would have a better prospect of avoiding bad ways than one who came of a family with different traditions. Housing was another important matter in this connection ; slums bred a degraded population and everyone looked for support for his conduct from people around him. In Dickens' time the anti-social germs had lodged and multiplied in dark and dirty corners. The best disinfectant was fresh air. The economic factor accounted for even more criminal conduct. More than from any other one cause, people became criminals because they were pressed by need. The economic system was hard on the weedy and weakly man of poor intelligence, and he wandered in and out of workhouse and jail. For the rest, anything that tended to improve and stabilise the country's trade and industry would tend to lessen crime.

Even if the social system were perfected, crime would hardly disappear altogether, and, in any event, our system was far from perfection. It had taken society a long time to realise that individuals could not all be treated alike under a standard tariff of punishments. Diagnosis must precede treatment. Considerable success had already attended the work of the Institute for the Scientific Treatment of Delinquency in dealing with the offender who showed irresponsibility short of insanity. Until recent years no attempt had been made to find out the facts behind the offence, or to study the character of the offender until he was actually in prison. The establishment of juvenile courts and probation had commenced a new system of careful adaptation of the sentence to the character of the offender. Foremost among the pioneers in this direction had been Sir William Clarke Hall.

If an offender finally decided not to be law-abiding, there must be a deterrent and a penalty, for the sake of the others, and it seemed difficult to devise an alternative to the prison system. There was no doubt that many were deterred by fear of imprisonment, and an important point in this connection was the standard of efficiency attained by the police. The important thing while prisons existed, was to make sure that they did not deteriorate those who were brought within them. Under the guidance of enlightened Boards of Prison Commissioners many great and beneficial changes had been made, and others were at hand. Gradually the spirit of anger and resentment had been eliminated from our penal system. A health authority which detained a sufferer from infectious fever in an isolation hospital was not animated by any feeling of vindictiveness ; a fully civilised society would deal in something of the same spirit with those who had to be segregated in prison for its protection.

University of London Law Society.

The University of London Law Society held a meeting at University College, Gower Street, on 1st November, the President, Mr. Charles Levy, LL.B., Barrister-at-Law, in the chair. The motion was : " That a legal training is an adequate preparation for all professions." Proposed by Mr. Herzog. Opposed by Mr. Rowlands. After an interesting discussion, it was put to the vote, and as there were fifteen votes each side the President gave his casting vote in favour of the motion.

Mr. Justice Humphreys presided at a moot on criminal law, which the University of London Law Society held at Gower Street, on Tuesday, 8th November. Mr. H. Ellis and Mr. H. Schwartz acted as counsel for the appellant, and Miss S. Ritter and Mr. D. B. Broad as counsel for the Crown. His lordship, giving judgment, quashed the conviction. The President, Mr. Charles Levy, LL.B., Barrister-at-Law, thanked his lordship for his presence, and said how much they all appreciated the trouble the judges took in giving of their time to help in that way.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 31st October, Mr. J. H. Vine Hall in the chair. Mr. T. R. Owens proposed : " That this House approves the foreign policy of His Majesty's Government." Mr. R. J. Kent opposed. Messrs. C. H.

Pritchard, H. A. Pratt, D. F. Millington, C. F. Walker, J. G. Ormerod, A. E. Hunter, E. D. Smith, J. H. Vine Hall, F. R. McQuown and O. T. Hill also spoke. After Mr. Owens had replied, the motion was put to the House and was lost by four votes. Attendance twenty (including two visitors).

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 7th November, Mr. J. H. Vine Hall in the chair. Mr. C. H. Pritchard proposed: "That in the opinion of this House the case of *Shirvell* v. *Hackwood Estates Co., Ltd.* [1938] 2 K.B. 577, was wrongly decided." Mr. Godfrey Gladston opposed. Messrs. H. S. Wood-Smith, C. F. Walker, F. R. McQuown, O. T. Hill, E. Dennis Smith, R. J. Kent and A. E. Hunter also spoke. Mr. Pritchard replied and on a division the voting was equal. The chairman abstained from giving a casting vote.

The Hardwicke Society.

A meeting of the Society was held on Friday, 28th October, in the Middle Temple Common Room, the President, Mr. Lewis F. Sturge, in the chair. The Hon. F. P. Howard moved: "That the free press in democratic countries is a disseminator of falsehood and a menace to the peace of the world." Mr. A. A. Baden Fuller opposed. There also spoke Mr. Bernard Simmons, Mr. Campbell Prosser, Major Hales, Miss Morgan Gibbon, Mr. Llewellyn Thomas (Imm. Past Pres.), Mr. C. O. Cummins, Mr. A. C. Douglas, Mr. G. E. Crawford (Ex. Pres.). The Hon. Mover having replied, the House divided, and the motion was lost by four votes.

A meeting of the Society was held on Friday, 4th November, in the Middle Temple Common Room, the president, Mr. Lewis Sturge, in the chair. Mr. Richard Ellis moved: "That national and international crises are the direct result of incompetent government by the upper and middle classes." Mr. Campbell Prosser opposed. There also spoke Major R. N. Hales, Mr. Granville Sharp (ex-president), Mr. T. K. Wigan, Mr. J. A. Petrie (ex-president), Miss Morgan Gibbon, Mr. Martin Woodroffe, Mr. L. S. Weinstock, Mr. Buller, Mr. C. O. Cummins, Mr. N. N. McKinnon, Mr. A. E. Hunter, Miss M. C. Davies, Miss Moshkowitz, Mr. Walter Stewart. The hon. mover having replied, the house divided, and the motion was lost by eight votes.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at the Council Room, Law Society's Hall, Chancery Lane, W.C.2, on Wednesday, 2nd November.

Mr. F. L. Steward (Wolverhampton) was in the chair, and the following Directors were present: Mr. H. F. Plant, M.C. (Vice-Chairman), Mr. G. L. Addison, Mr. G. S. Blaker (Henley), Mr. W. E. M. Blandy (Reading), Mr. P. D. Botterell, C.B.E., Mr. G. K. Buckley (Preston), Mr. J. Cherry, Sir E. Cook, C.B.E., LL.D., Mr. C. H. Culross, Mr. T. S. Curtis, Mr. W. P. David (Bridgend), Mr. G. C. Daw (Exeter), Mr. W. H. Day (Maidstone), Mr. E. F. Dent, Mr. A. N. Hickley, Mr. G. Keith, O.B.E., Mr. C. W. Lee, Mr. C. G. May, Mr. A. R. Moon (Manchester), Mr. R. B. Pemberton and Mr. W. N. Riley (Brighton). The Directors heard with deep regret that their Secretary, Mr. Thomas Gill, had died that morning and they passed a resolution recording their deep sense of loss and their sincere appreciation of Mr. Gill's devoted services during twenty-eight years. £1,869 was distributed in grants to necessitous cases and eighteen new members admitted. Mr. Harvey F. Plant, M.C. (London), was appointed Chairman, and Mr. Henry White, M.A. (Winchester), Vice-Chairman, for the ensuing year. Mr. Gerald Addison was appointed a member of the Finance and General Purposes Committee.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 1st November (Chairman, Mr. P. H. North-Lewis), a moot was held before His Honour Judge Crawford. Mr. W. S. Chaney opened in the affirmative; Mr. D. Tolstoy opened in the negative. The following members also spoke: Messrs. D. J. Kennedy, L. E. Long, R. D. Graham, G. A. Russo, C. O'Connor. There were twenty-one members and six visitors present.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 8th November (Chairman, Mr. J. B. Latey), the subject for debate was: "That this House distrusts the scientific outlook in modern education." Mr. E. V. E. White opened in the affirmative; Mr. J. E. Terry opened in the negative. The following members also spoke: Messrs. G. Roberts, F. D. Kennedy, J. M. Shaw, P. G. Roberts, C. W. Denniss, J. R. Campbell-Carter. The opener having replied, the motion was carried by one vote. There were thirteen members and two visitors present.

Parliamentary News.

Progress of Bills.

House of Lords.

Overseas Territory Bill.
Read First Time. [3rd November.
Select Vestries Bill.
Read First Time. [8th November.

House of Commons.

Housing (Financial Provisions) (Scotland) Bill.
Read First Time. [9th November.
Outlawries Bill.
Read First Time. [8th November.
Prevention of Fraud (Investments) Bill.
Read First Time. [9th November.

Rules and Orders.

PROVISIONAL REGULATIONS, DATED OCTOBER 13, 1938, MADE BY THE MINISTER OF HEALTH UNDER SECTION 6 (3) OF THE LOCAL GOVERNMENT (FINANCIAL PROVISIONS) ACT, 1937 (1 EDW. 8 AND 1 GEO. 6, C. 22).

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. H. I. P. HALLETT, K.C., be appointed Recorder of Newcastle-on-Tyne, to succeed the late Mr. R. Storry Deans. Mr. Hallett was called to the Bar by the Inner Temple in 1911, and took silk in 1936.

The Lord Chancellor has appointed Mr. ALBERT EDWARD EVANS, M.B., B.S., D.P.H., a Commissioner at the Board of Control, to be a Chancery Visitor of Lunatics, in the place of Lieutenant-Colonel Nathan Raw, C.M.G., M.D., who has retired.

The following appointments and promotions are announced in the Colonial Legal Service: Mr. H. W. N. BETUEL appointed Magistrate, Nigeria; Mr. C. A. G. LANE (Resident Magistrate, Kenya) appointed Puisne Judge, Sierra Leone; Mr. W. J. LOCKHART-SMITH (Assistant Land Officer, Hong Kong) appointed Registrar of the High Court, Tanganyika Territory; Mr. C. MATHEW (Crown Counsel) appointed Judicial Adviser, Buganda, Uganda; Mr. A. C. SMITH, M.C. (Police Magistrate, Nigeria) appointed Third Puisne Judge, Trinidad.

Major-General the EARL OF ATHLONE has consented to become, and has been elected, an Honorary Master of the Bench of the Middle Temple. Mr. Justice STABLE has been elected a Master of the Bench.

Mr. F. H. L. ERRINGTON has been elected Treasurer of the Honourable Society of Lincoln's Inn for the year beginning 11th January, 1939.

Notes.

The University of London Law Society announce that a debate on "This House would favour the reform of the law relating to abortion" will be held at University College, on Tuesday, 15th November, at 8 p.m. Visitors are cordially invited.

In view of the large attendance that is expected, the appeal dinner on behalf of the Institute for the Scientific Treatment of Delinquency will be held on the 29th November, at 8.30 p.m., at the Savoy Hotel, and not at 55, Park Lane, as stated in last week's issue. Viscount Hailsham will be in the chair, and the speakers will include the Lord Chancellor, Viscount Samuel and Mr. St. John Hutchinson, K.C. Lord Roche is hon. treasurer for the dinner fund.

The twelfth annual Good Counsel Ball in aid of the Society of Our Lady of Good Counsel which gives free legal aid to the poor will be held at Claridges on Friday, 18th November. Mr. Justice Langton and Lady Langton will receive the guests. Lady Acton is the Chairman of the Executive Committee. There will be an amusement room under the charge of Lady Gregory, Lady Vaughan, Mrs. Leitch and Mrs. Seuffert. Tickets are obtainable from the Hon. Secretary, 53, Vicarage Court, W.8.

IMPORTANT NOTICE TO SOLICITORS.

ANNUAL PRACTISING CERTIFICATES.

Practising certificates for the year 1937–38 will expire on the 15th November, and should be renewed before the 15th December.

All certificates on which the duty is paid after the 1st January next must be left with The Law Society for entry, and the names of solicitors taking out their certificates after that date cannot be included in the Law List for 1939.

Wills and Bequests.

Mr. Edgar John Bechervaise, solicitor, of Portsmouth left £19,044, with net personalty £11,986.

Mr. Philip Rider Christie, LL.M., solicitor, of East Molesey and of Lincoln's Inn, left £17,516, with net personalty £16,647. He left £200 each to King Edward's Hospital Fund for London and the British Legion, £100 each to the R.S.P.C.A. and the Royal National Lifeboat Institution, £100 each to Molesey Cottage Hospital, the Solicitors' Benevolent Association, and United Law Clerks Society, £50 to the Organist of the Chapel Royal, Hampton Court, for the musical services or choir.

Mr. Caleb William King, solicitor's clerk, of Hornsey, and of Southwark, left £22,655, with net personalty £3,055.

Mr. Arthur Freville Maling, solicitor, of Sunderland, left £27,424, with net personalty £21,685.

Mr. Wilfred Moss, solicitor, of Loughborough, left £36,800, with net personalty £27,671.

Mr. Miles Herbert Prance, solicitor, of Sutton, Surrey, and Clement's Inn, left £21,185, with net personalty £20,142.

Mr. Rudolph Salomonson, solicitor, of Maidenhead, left £36,534, with net personalty £36,338.

Mr. John St. Clair Upton, solicitor, of Market Drayton, left £22,029, with net personalty £8,741.

Mr. Francis or Frank Westwood, retired solicitor, of Rickmansworth, left £26,226, with net personalty £25,071.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	GROUP II. MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 14	More	Jones	*Blaker	Hicks Beach
,, 15	Hicks Beach	Ritchie	*More	Andrews
,, 16	Andrews	Blaker	*Hicks Beach	Jones
,, 17	Jones	More	Andrews	Ritchie
,, 18	Ritchie	Hicks Beach	Jones	Blaker
,, 19	Blaker	Andrews	Ritchie	More

	GROUP II. MR. JUSTICE MORTON. Witness Part II.	MR. JUSTICE BENNETT. Witness Part I.	GROUP I. MR. JUSTICE CROSSMAN. Witness Part II.	MR. JUSTICE SIMONDS. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 14	*More	*Andrews	Jones	Ritchie
,, 15	*Hicks Beach	*Jones	Ritchie	Blaker
,, 16	*Andrews	*Ritchie	Blaker	More
,, 17	*Jones	*Blaker	More	Hicks Beach
,, 18	*Ritchie	*More	Hicks Beach	Andrews
,, 19	Blaker	Hicks Beach	Andrews	Jones

*The Registrar will be in Chambers on these days, also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th November 1938.

	Div. Months.	Middle Price 9 Nov. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108¼	3 13 11	3 7 8
Consols 2½%	JAJO	72½	3 9 0	—
War Loan 3½% 1952 or after ...	JD	99¾	3 10 2	—
Funding 4% Loan 1960-90	MN	109½	3 13 1	3 7 2
Funding 3% Loan 1959-69	AO	96	3 2 6	3 4 2
Funding 2¾% Loan 1952-57	JD	94xd	2 18 6	3 3 7
Funding 2½% Loan 1956-61	AO	88½	2 16 6	3 4 10
Victory 4% Loan Av. life 21 years ...	MS	108½	3 13 9	3 8 5
Conversion 5% Loan 1944-64 ...	MN	111	4 10 1	2 12 6
Conversion 3½% Loan 1961 or after	AO	100	3 10 0	3 10 0
Conversion 3% Loan 1948-53 ...	MS	100	3 0 0	3 0 0
Conversion 2½% Loan 1944-49 ...	AO	97½	2 11 3	2 15 10
National Defence Loan 3% 1954–58	JJ	98	3 1 3	3 2 8
Local Loans 3% Stock 1912 or after	JAJO	85¾	3 9 11	—
Bank Stock	AO	331½	3 12 4	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81	3 7 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87½	3 8 7	—
India 4½% 1950-55	MN	111½	4 0 9	3 6 5
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105	4 5 9	4 3 8
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	106	3 15 6	3 7 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104½	4 6 1	2 18 4
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90½	2 15 3	3 4 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	100½	3 19 7	3 19 2
Australia (Commonw'th) 3% 1955-58	AO	86½	3 9 4	3 19 10
*Canada 4% 1953-58	MS	108½	3 13 9	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 6
New South Wales 3½% 1930-50 ...	JJ	94½	3 14 1	4 1 8
New Zealand 3% 1945	AO	90½	3 6 4	4 15 0
Nigeria 4% 1963	AO	106½	3 15 1	3 12 1
Queensland 3½% 1950-70	JJ	92½	3 15 8	3 18 4
*South Africa 3½% 1953-73	JD	99½	3 10 4	3 10 6
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	84	3 11 5	—
Croydon 3% 1940-60	AO	94	3 3 10	3 8 0
*Essex County 3½% 1952-72 ...	JD	101½	3 9 0	3 7 3
Leeds 3% 1927 or after	JJ	83	3 12 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70½	3 10 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	82½	3 12 9	—
Manchester 3% 1941 or after ...	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	95	2 12 8	3 0 10
Metropolitan Water Board 3% "A" 1963-2003	AO	85½	3 10 2	3 11 7
Do. do. 3% "B" 1934-2003 ...	MS	86½	3 9 4	3 10 7
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	106	3 15 6	3 9 0
* Do. do. 4½% 1950-70	MN	109	4 2 7	3 11 4
Nottingham 3% Irredeemable ...	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	103½	3 17 4	—
Gt. Western Rly. 4½% Debenture ...	JJ	110½	4 1 5	—
Gt. Western Rly. 5% Debenture ...	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge ...	FA	120	4 3 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	113½	4 8 1	—
Gt. Western Rly. 5% Preference ...	MA	92½	5 8 1	—
Southern Rly. 4% Debenture ...	JJ	103½	3 17 4	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	105½	3 15 10	3 13 0
Southern Rly. 5% Guaranteed ...	MA	114½	4 7 4	—
Southern Rly. 5% Preference ...	MA	96½	5 3 8	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.